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AMERICAN STATE TRIALS

*A Collection of the Important and Interest-
ing Criminal Trials which have taken place
in the United States, from the beginning
of our Government to the Present Day.*

WITH NOTES AND ANNOTATIONS

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EDITOR

VOLUME IV

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TO
MY MOTHER.

PREFACE TO VOLUME FOUR.

While the judicial reports are full of civil actions for damages against physicians and surgeons for malpractice, there are few reported criminal prosecutions. The reason is that the criminal law of England and America has always with a tender care protected this profession from so grave a responsibility for erroneous opinion or mistaken zeal. One of the earliest of the great English common law Judges said: "God forbid that a failure should subject the unfortunate practitioner to a criminal prosecution when he has done the best he could to effect a cure." So when in the year 1832 in Baltimore, Maryland, *Francis Burke* (p. 1) was tried for manslaughter because a patient whom he had treated according to the Thomsonian system—a method which all the regular physicians united in saying was most ridiculous and absurd—had died on his hands, the Judge told the jury that the law had nothing to do with the merits or demerits of any school of medicine or whether one was better or worse than the other but that the only questions they had to decide were first, was the practitioner qualified to apply the remedies according to the system he professed to employ and second, did he use due care in doing so.

The Trial of *Charles Sprague* (p. 88) discloses a form of insanity very strange but at the present day well understood and defined.

The most celebrated criminal trial in the United States in the character and standing of the culprit, the victim and the witnesses is undoubtedly that of *Professor John W. Webster* (p. 93) for the murder of Dr.

Parkman. There will appear in future volumes of this series great national political trials like those of Aaron Burr and Andrew Johnson and great historical ones like those of the assassins of three Presidents. But the defendants in the first two of these were not malefactors and in the last three were obscure and half insane fanatics. Professor Webster was the honored occupant of a chair in our greatest American University, and the man he killed was a prominent scientist and philanthropist of the most cultured city on the continent. In all its details, the crime was as extraordinary as it is celebrated. Only a few months previous, the murderer and his victim had sat side by side on a platform at the dedication of the new Medical Building whose erection was due to the munificence of Dr. Parkman, and the professor had listened to the speeches eulogizing the benevolence and the public spirit of the physician. To him had the professor applied for financial aid on more than one occasion, and the very chair he filled in the college was the endowment of the man whom he slew in that very building. And when in his small room on the first floor he was beating to death his benefactor and patron, the noise he made disturbed not a little the quiet of the class room just overhead, wherein was lecturing to his students in medicine, that gentlest of American poets and humorists, Dr. Oliver Wendell Holmes.

Was it a cold blooded murder with the design of getting out of the way at one stroke his creditor and his embarrassing debts or was it the result of a sudden fit of anger, as claimed by the professor in his last confession? The question is hard to answer. The one thing certain is that had he made a clean breast of it on the day of the killing or even after he had disposed of the

body, and up to the next Sunday, he would never have been hanged and would certainly not have been convicted of more than manslaughter. But when he called on his pastor, the brother of his victim, on that fatal Sunday afternoon and told the clergyman that the doctor had called at his office on the day of his disappearance and had been paid his debt and had gone away with the money, he owed him—this was the end of all for him. He stood to this story throughout the trial and until death stared him in the face, and then made his confession. But it was now too late. A confessed liar and thief, his word was no longer worth anything. And yet one cannot read his confession without a feeling that he may after all have been guiltless of the capital crime for which he suffered, for in the very shadow of the gallows, when all hope was gone, he repeats it in this pathetic letter which he asked to be kept secret, but which later found its way into the public prints:

Boston, August 6, 1850.

Rev. Dr. Parkman:

Dear Sir,—I cannot leave this world in the peace of mind for which I pray, without addressing you, as the head of that family which I have so deeply injured and afflicted, to make known to you and them the bitter anguish of soul, the sincere contrition and penitence, I have felt at having been the cause of the affliction under which you and they have been called to mourn. I can offer no excuse for my wicked and fatal ebullition of passion but what you already know, nor would I attempt to palliate it.

I had never, until the two or three last interviews with your brother, felt towards him anything but gratitude for his many acts of kindness and friendship. That I should have allowed the feelings excited on those occasions to have overpowered me so as to involve the life of your brother and my own temporal and eternal welfare, I can, even now, hardly realize.

I may not receive from you forgiveness in this world, yet I cannot but hope and believe you will think of me with compassion, and remember me in your prayers to Him who will not turn away from

the humble and repentant. Had I many lives, with what joy would I lay them all down, could I in the least atone for the injury I have done, or alleviate the affliction I have caused; but I can now only pray for forgiveness for myself and for every consolation and blessing upon every member of your family.

In justice to those dearest to me, I beg to assure you, and I entreat you to believe me, no one of my family had the slightest doubt of my entire innocence up to the moment when the contrary was communicated to them by Dr. Putnam. That they have your sincere pity and sympathy, I feel assured.

There is no family towards every member of which I have always felt a greater degree of respect and regard than that of which you are now the head. From more than one I have received repeated acts of friendship and kindness, for which I have ever been and am most truly grateful.

Towards yourself, in particular, have not only my own feelings been those of the most sincere regard and gratitude, but every individual of my family has felt towards you that you were their pastor and friend. Often has my wife recalled the interest you took in her from her first becoming your parishioner, and often has she spoken with feelings of deep gratitude, of the influence of your public ministrations, and of your private instructions and conversations, and of your direction of her inquiries and reading in what related to her religious views. These she has often recalled and referred to, as having firmly established the religious faith and trust which are now such sources of consolation and support to her and our children, as well as to myself.

Nothing that has occurred has weakened these feelings; and, although those I leave behind me may not meet you without the keenest anguish, I trust you will exonerate them from any participation in, or knowledge of, their father's sin, up to the moment I have mentioned. And may you remember them in your prayers to the Father of the fatherless and the widow's God!

I beg you, my dear sir, to consider this strictly a private letter, and by no means to give it publicity; at the same time, I will request you to make known to the immediate members of your family the state of my feelings and my contrition.

That every consolation and blessing may be vouchsafed to yourself and to every member of your family, is the heartfelt prayer of

Yours, most respectfully,

J. W. WEBSTER.

A curious case of mistaken identify is that of *Thomas Hoag* (p. 456). The woman who swore she was mar-

ried to him described him as the handsomest man she had ever seen, and looking at him as he stood before her in the dock exclaimed: "How often have I combed those dear locks!" Her sister said the same thing; all the neighbors in the little country town identified him, and yet beyond a shadow of a doubt every man and woman of them was deceived.

The canny Virginian gentleman with the Scotch name who took such good care of his money was no match at all for the light-fingered gentry of his day, even within the sacred precincts of a church. (*Henry B. Allison*, p. 464).

Poor *Tommy Lafon* (p. 473), whose unfortunate but natural defense of his little brother resulted so fatally, was convicted and punished not for the homicide but for the unnatural and hard-hearted conduct of his aristocratic mother towards the poor butcher-boy whose life he accidentally took.

That it is a very serious thing to interfere with the right of locomotion of a man of the law, *James Lent* (p. 545), found out to his sorrow. The most interesting incident in the case is, however, the brushing aside by the old New York magistrate of that most frequent and long-lived excuse "I forgot."

The action of *Trevett v. Wheeden* (p. 548) marks not only the birth in this nation of that mistaken political economy whose descendants have called themselves Greenbackers and Free Silverites, but is one of the earliest instances of the exercise by a court of the high function of declaring an act void because it disagrees with the constitution. And the case of *The Rhode Island Judges* (p. 584) marks the beginning of a struggle against that power, not yet ended and probably never to end. The great speech of General Varnum, as it is

set out, does not seem to justify the great praise it received in its day, and to the modern reader adds nothing to the reputation of that distinguished lawyer. The explanation may be found in the fact that it was reduced to writing after the excitement which produced it had passed away.¹

Of the state of affairs in the United States and the world in the year 1795—how history is repeating itself today!—Dr. Wharton says:

“France and England were now struggling for the mastery of the ocean, and by this gigantic contest the remotest tides were affected. The United States possessed the only carrying trade as yet unabSORBED, and presented, therefore, a surface particularly open to collision. The United States possessed the only neutral ships still afloat, as well as the only neutral seamen to man them; and to these essential staples, the contending powers looked both for sail and sailors. The one, secure in her maritime supremacy, strutted over the seas like a constable, breaking into our ships, and kidnaping their crews. The other, unable to rob in the highway, sneaked about the hedges and bushes, and sticking her flag out of the reach of the cannon of her rival, undertook upon American soil, out of American bottoms and American sailors, to manufacture French privateers. The aggressions of the first could only be met, as at last they were met in 1812, by arms; the aggressions of the latter, being committed within our own jurisdiction, were the proper subjects of municipal action.”

It was from the efforts on the part of the American government to enforce its neutrality by these means, that the prosecutions of *Gideon Henfield* (p. 615) and *John Etienne Guinet* (p. 637) took place.

The political quarrel which these prosecutions provoked: the opposition to them on both constitutional and sentimental grounds—for a large majority of the American people were in close sympathy with their late French ally,—present a dramatic picture of the early days of our government. We see the first

¹ Chand. Crim. Tr.

Chief Justice of the United States, with the pen hardly dry with which the great cotemporaneous commentary on the constitution was partly written, hurrying to Richmond to declare to the first Federal grand jury that ever sat there, the doctrine, afterwards abandoned,² that, by the common law, the Federal courts have power to punish offences against the Federal sovereignty. The *Case of Breach of Neutrality* (p. 600). We see Genet, to check whose depredations this prerogative was invoked, supplying an American skipper with the French flag; we see an English merchant-

² The people were right and the Government wrong. When a few years later (1812) the proprietors of the *Connecticut Current* were indicted for a libel on the President of the United States and the Congress, in charging them with having in secret voted two million dollars to Bonaparte for leave to make a treaty with Spain, the Judges of the Circuit were divided in opinion as to whether the Federal Court had a common law jurisdiction in cases of libel, Congress not having made libel a crime. So the case was certified to the Supreme Court where the Judges said No, adding: "Although this question is brought up now for the first time to be decided by this court, we consider it as having been long ago settled in public opinion. In no other case for many years has the jurisdiction been asserted and the general acquiescence of legal men shows the prevalence of opinion in favor of the negative of the proposition." U. S. v. Hudson, 7 Cranch 32; U. S. v. Coolidge, 1 Wheat 465; U. S. v. Britton, 108 U. S. 199. The course of reasoning which leads to this conclusion is simple and obvious. The powers of the general government are made up of concessions from the several states; whatever is not expressly given to the former, the latter expressly reserve. The judicial power of the United States is a constituent part of those concessions; that power is to be exercised by courts organized for the purpose, and brought into existence by an effort of the legislative power of the Union. Of all the courts which the United States may, under their general powers, constitute, one only—the Supreme Court—possesses jurisdiction derived immediately from the constitution, and of which the legislative power cannot deprive it. All other courts created by the general government possess no jurisdiction but what is given them by the power that creates them.

man seized in the river Delaware by the vessel thus equipped; and we find a Connecticut day laborer magnified into a cause of war by the fact that, without casting off his American allegiance, he undertook to serve in the Gallicised privateer. The English minister demanded his arrest; the French minister insisted on his discharge; and all the Judges of the Supreme Court were summoned to give dignity and effect to his trial. By the court he was pronounced an offender against the Constitution and laws of the United States; by the jury he was decided to be an offender against neither (*Gideon Henfield*, p. 615); and, while Mr. Jefferson directed Mr. Morris to tender to the English ministry the charge of the court, as demonstrating that the Federal government had power to punish offenders against the laws of nations, Mr. Genet issued cards to a dinner in which many American dignitaries were invited to meet "citizen Henfield," and, where the position was boastingly taken, that by the verdict of a jury it was settled that the American people were hereafter to make war upon Great Britain, under the French flag. But when Congress, having been called in session, passed a neutrality law giving the Federal Courts jurisdiction of persecutions for breach of neutrality, the government had easy sailing (*John Etienne Guinet*, p. 637).

The modern American policeman has altered not at all since the New York Judge remarked (*James Williamson*, p. 649) upon the effect which the possession of a little power and brief authority will produce in the minds of some people. He still imagines himself to be not the servant of the people but its master.

We in this day and generation can hardly imagine how extensively piracy prevailed two centuries ago,

and the fear it inspired in those who either traveled by sea or dwelt in cities and towns on the coast. There was no part of the high seas that was free from the depredation of roving robbers. At times they threatened towns on the coast, and at others they attacked ships on mid-ocean; and they seem to have followed their lawless pursuits at will.³ Hence it became one of the highest crimes known to the law of every nation. Thus it is laid down by the old authorities:

Piracy is a robbery committed upon the sea, and a pirate is a sea thief. Indeed, the word "pirata" as it is derived from "transire, a transeundo mare," was anciently taken in a good and honourable sense, and signified a maritime knight, and an admiral or commander at sea; as appears by the several testimonies and records cited to that purpose, by that learned antiquary Sir Henry Spelman in his *Glossarium*. And out of him the same sense of the word is remarked by Dr. Cowel, in his *Interpreter*; and by Blount in his *Law Dictionary*. But afterwards the word was taken in an ill sense, and signified a sea rover or robber; either from the Greek word *deceptio, dolus, decelpt*; or from the word *transire*, of their wandering up and down, and resting in no place, but coasting hither and thither to do mischief; and from this sense, sea-malfactors were called pirates. Therefore a pirate is thus defined by my Lord Coke: "This word pirate," saith he, "in Latin *pirata*, is derived from the Greek word, which again is fetched from a *transeundo mare*, of roving upon the sea: and therefore in English a pirate is called a rover and robber upon the sea." As to the heinousness or wickedness of the offense, it needs no aggravation, it being evident to the reason of all men. Therefore a pirate is called *hostis humani generis*, with whom neither faith nor oath is to be kept. And in our law and by the civil law any one may take from them their ships or vessels, so that excellent civilian Dr. Zouch, in his book *De Jure Nautico*, saith, "In detestation of piracy, besides other punishments, it is enacted, that it may be lawful for any one to take their ships."

The trials of *Major Stede Bonnet* and his thirty-three followers (p. 652) show that when caught, there was little delay in bringing them to trial and securing

* Proceeding Mass. Hist. Soc., Feb., 1911.

a conviction, and technicality in forms played no part in reaching results. At times there were multiple executions, and in the community there was no morbid sentimentality shown for the miserable wretches. Not the least of their torture was listening to a long sermon by the Judge on delivering sentence (p. 703, 717), and afterwards sitting in the meeting-house on the Sunday before execution and listening to their own funeral sermons, when the minister told them what they might expect in the next world if they got their just dues.

A striking view of what a southern gentleman had to put up with if he ventured into a New England town with that particular kind of property which both the constitution and the laws of the United States protected, but which a large portion of the population of New England did not approve of, is furnished in the Trial of *John and Sarah Robinson* (p. 723). They were good and estimable people, these abolitionists, but for such laws as did not agree with their opinions they had no more regard than the modern anarchist has.

The trial of *John R. Kelly* (p. 735) shows the demoralization which always follows a great war. A little dispute over a ticket at a circus develops in a few minutes into an impromptu battle and discovers that nearly every man in the great crowd is armed to the teeth as though an enemy army were advancing.

A common incident in a great city was that in *Ward's case* (p. 853). A crowded street corner, teamsters and pedestrians struggling for the right of way; a quarrel and a fight with a fatal ending!

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THE TRIAL OF FRANCIS BURKE FOR THE MAN- SLAUGHTER OF BENJAMIN M. HAZELIP, BALTIMORE, MARYLAND, 1832.

THE NARRATIVE.

There existed in the first half of the Nineteenth Century a form of empiric medicine introduced by Samuel Thomson¹ which had numerous followers in all parts of the United States. The practitioners were not licensed physicians, but were popularly known as Herb Doctors and the system was known as the Thomsonian System. Its three great remedies were sweating, lobelia and capsicum, and one of the leading principles was that the human body was composed of four elements, earth, air, fire and water, and one of its apothegms was that metals and minerals being in the earth, extracting them from its depths and taking them into the human body had the result of carrying back into the earth those that so used them, while on the other hand the tendency of all vegetables was to spring away from the earth, and hence to keep those who consumed them from the grave.

The cholera raged in the City of Baltimore and other parts of the country in the year 1832 and the Thomsonian Method was supposed by its followers to be very efficacious in the scourge. Doubtless many fees were lost by the physicians of the old school on this account, and it was not strange that they should have tried to find an "herb doctor" to make an example of. They found two, Francis Burke and William Bell, whom they were able to prove had put one Hazelip through a course of intense sweating and enormous doses of their favorite remedies. And the patient having died, the Grand Jury was induced to indict them for manslaughter.

Burke, who was tried first, as a sort of test case, did not

¹ 1769-1843.

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deny the treatment, but justified it, and although the regular physicians had any number of their members to testify that the treatment was all wrong and that Hazelip's life would have been saved had he employed a licensed doctor of medicine, they were confounded by the host of people that came forward to show that they had been cured after the regular physicians had failed and that during the cholera epidemic the old school had lost a larger proportion of patients than the new. The defense did not call all the people who were eager to give their testimony for Burke, and the jury took only a few minutes to return a verdict of not guilty.

THE TRIAL.²

In the City Court of Baltimore, December, 1832.

HON. NICHOLAS BRICE,³ *Chief Justice.*

HON. ALEXANDER NISBET,⁴ *Associate Justice.*

December 12.

The prisoners, Francis Burke and William Bell, had been jointly indicted by the Grand Jury for the manslaughter of

² *Bibliography.* "Trial of Francis Burke, Before Baltimore City Court, on an Indictment for Manslaughter, by Administering to Benjamin M. Hazelip Certain Thomsonian Remedies. Baltimore: Printed by James Lucas & E. K. Deaver. 1832."

³ BRICE, NICHOLAS. (1771-1851.) Born Annapolis, Md. Son of Judge John Brice, of Annapolis. One of the founders of the Baltimore Library, 1795 (since merged in the Maryland Historical Society). He took part in the defense of Baltimore, 1814. President of the Maryland Colonization Society (1 Md. His. Mag. 375: Sketch of Brice Family in Baltimore *Sun*, Jan. 13, 1907, p. 17). Judge of the Baltimore City Court when it was established in 1817, and served until his death, 34 years later, when he was its senior and chief judge (14 Monthly Law Rep. 164). President of the Farmers and Merchants Bank of Baltimore, 1819-1841. At a memorial meeting of the Baltimore bench and bar, there was praise of a "life eminent for its integrity and industry." (Baltimore *Sun*, May 12, 1851).

⁴ NISBET, ALEXANDER. (1777-1857.) Second son of Rev. Dr. Charles Nisbet, from 1785 to 1804 President of Dickinson College, where he graduated in 1794 (Wing's History 1st Presb. Church, Carlisle, 140). Became a member of the bar at twenty; a member of St. Andrew's Society 57 years, and its President 27 years, and

FRANCIS BURKE

Benjamin M. Hazelip in violently making him submit to the application of steam externally and to taking internally certain poisonous drugs.

*Thomas Jennings*⁵ and *R. W. Gill*,⁶ Deputy Attorneys General of Maryland, for the State.

*George R. Richardson*⁷ and *David Stewart*,⁸ for the Prisoners.

President of the Baltimore & Susquehanna Railroad, 1833-1835 (Howard's Monumental City, 814). Last surviving member of the bench of the Criminal Court of Baltimore under the old constitution. Died suddenly at his residence in Baltimore County, early in the morning of November 22, 1857—the result of an accidental fall from the open window of his chamber. He filled his judicial position with much credit. In every relation of life he was a high-minded and honorable gentleman (*Baltimore Sun*, Nov. 24, 1857). He was buried at his seat, Montrose, near Baltimore, where his tombstone bears the following epitaph: "Alexander Nisbet, born at Montrose, Scotland, June 26, 1777; came to the United States in 1784; died Nov. 22, 1857. Judge of the Baltimore City Court. President of the St. Andrew's Society for 26 years. As a husband and father, devoted and affectionate; as a friend, confiding and faithful; as a judge, upright and impartial. 'Blessed are the peacemakers; for they shall be called the children of God.'—Matt. 5-9." (Ridgely's Historic Graves of Md. 133.)

⁵ JENNINGS, THOMAS. (1766-1836.) At a memorial meeting of the bench and bar of Baltimore, it was determined to wear mourning 30 days for "the polite gentleman, accomplished lawyer, and eloquent advocate" in whose death the profession had "sustained a heavy loss." (*Baltimore American*, April 13, 1836.)

⁶ GILL, RICHARD W. Son of John Gill, of Alexandria, Va. Appointed, March, 1834, one of the trustees of the Bank of Maryland, on its suspension. "And now began a war of pamphlets and newspapers which lasted for 18 months with ever increasing violence; the public grew to believe the whole affair a gigantic swindle," and a mob, which controlled the city some days, destroyed the houses of the bank officers. (Scharf Hist. of Balt. 784.) At the time of his death he was clerk of the Court of Appeals, Annapolis, which held memorial meetings, at which one of the speakers said: "I have never known one who more deservedly and universally possessed the esteem of all who knew him." (Warfield Founders of Anne Arundel Co., Md. 131.) In collaboration with J. Johnson (probably Chancellor John Johnson) he prepared cases in Court of Appeals of Maryland, 1829-1841; 12 Volumes, Baltimore, 1829-1845. (Allibone's Dictionary of Authors.) Died in January, 1852.

⁷ RICHARDSON, GEORGE R. (1803-1851.) Born Worcester County, Md. Admitted Baltimore bar, 1825. Deputy Attorney General, 1836; Attorney General, 1845-1851. Was one of the most brilliant criminal lawyers of his day. "He never had his equal at the Balti-

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Mr. Richardson asked that the case of William Bell be proceeded with first.

Mr. Jennings objected. Burke was the principal offender and should be first tried.

The COURT ordered the trial of Burke to begin and that the *Clerk* call the jury.

Mr. Jennings suggested that each juror, as he came to the book, should state to the court if he had formed and expressed an opinion on the case; and the questions were propounded in that form. Some of the jurors candidly stated in reply, that they had formed an opinion favorable to the prisoner, and retired from the box. On the question being propounded to John E. Stansbury, he replied that he had not formed nor expressed any opinion upon the subject.

more bar, probably, in the force of his appeals to the jury, not to mercy, but to vindicate the majesty of the law. His searching, vigorous cross-examination, his keen sifting and analysis of testimony, his bold arraignment and scathing impeachment made him the terror of the criminal and the dread of the criminal's counsel. He was manly, brave, generous." (Scharf Hist. Balt. 714.) Dedicated to the ministry, he graduated at Princeton with high honors. "His ambition was lofty; his intellect was clear and his diction was of purest English; his voice sweet and melodious; his presence commanding and magnetic; his face handsome and expressive; his action graceful and attractive, and his eloquence swayed the minds of the jury as with a wand." (Nelson Hist. Balt. 254.) At a meeting of the Baltimore bar the day after his death, Reverdy Johnson said: "He had a mind of great vigor, and a power of condensation rarely if ever surpassed. He had an ardent love of his profession. He justly stood in the front rank of the Maryland bar, as he would have done at any bar." Another spoke of "his high attainments; the masculine vigor of his thoughts; his close-knit, cogent logic; his intense, impassioned eloquence." (Baltimore *Sun*, 12 Feb. 1851.)

⁸ STEWART, DAVID. (1800-1858.) Born Baltimore. Occupied many positions of honor and trust; was member of house of delegates and State Senate, of state reform convention, and of United States Senate, 1849; was in affluent circumstances. (Baltimore *Sun*, Jan. 6, 1858.) At a meeting of the bar, the day following his death it was said that he had been engaged in extensive practice for many years, and was a citizen who had taken deep interest and exercised large influence in public affairs; that he had been a benevolent man, in all the courtesies of life a model; a ripe and finished scholar; that few men had attained so high rank at the bar; that his death was a great public calamity. (Baltimore *Sun*, Jan. 7, 1858.)

Deputy Attorney General *Jennings* asked that triers should be sworn for the purpose of determining whether John E. Stansbury stood indifferent or not.

Three triers from the jurors previously sworn, viz: Samuel Child, John Durham and Henry Hanna, were sworn. The state called witnesses who proved that Elijah Stansbury, Jr., was the purchaser of a right under the Thomsonian patent, and that he was a practitioner of that system.

Mr. Jennings contended that, as Elijah Stansbury, Jr., was the brother of John E. Stansbury, and deeply involved in his feelings in the success of this system, and consequently in the result of this very trial, he was not *omni exceptione major*, and of course, should not be sworn as a juror.

Counsel for the Prisoner argued that the bias which the State's Attorney attempted to show as resulting from the relation of John E. Stansbury and Elijah Stansbury, Jr., in connection with the fact of Elijah Stansbury, Jr., being a holder of a right, was altogether too remote and indistinct to warrant the belief that he would not decide according to the testimony—that the great object was to have a fair and impartial trial, by competent and disinterested men, and that nothing in the present case had been shown to satisfy the court that the juror, John E. Stansbury, had not all those important attributes, required for his office.

The COURT submitted the question to the triers, who decided that John E. Stansbury was competent to serve. The *Jurors* were then sworn, the indictment was then read,⁹ and the *Prisoner* pleaded *Not Guilty*.

⁹ State of Maryland, City of Baltimore. The jurors of the State of Maryland, for the body of the City of Baltimore, do upon their oaths present, that Francis Burke, late of the city aforesaid yeoman, and William Bell, also late of the city aforesaid, yeoman, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the 17th day of September, in the year 1832, with force and arms at the city aforesaid, in and upon one Benjamin M. Hazelp, in the peace of God and of the said state, then and there being, feloniously and wilfully did make an assault, and feloniously and wilfully did then and there administer unto, and cause to be received by the said Benjamin

IV. AMERICAN STATE TRIALS

THE WITNESSES FOR THE STATE.

Lorenzo Patrick. Was intimate with the deceased; saw him after his death. Early in the morning he came in the room in which I was at work; he staid about a minute, went out and immediately returned, and again went out with a roll of blankets which he took and went to Mr. Bell's. This was before breakfast, about 8 o'clock. Between 11 and 12 heard Mr. Hazelip was at Mr. Bell's, and immediately went there. Mr. Bell stated to me that it was a strong case of spasmodic cholera. Went up and found Mr. Hazelip on a machine they use for steaming. He was lying upon the machine and was very restless; his face was much flushed. He said he was not able to stand it; never would be able to go through it. Mr. Bell and Mr. Burke were both engaged in the

operations. Bell told him that as he commenced, he must go through it; that he would forfeit fifty dollars if Mr. Hazelip should not be a well man. Bell further said that if Hazelip had been an hour later in coming, his case would have been very desperate. Left Bell's and went to Mrs. Hazelip's. In a few minutes Mr. Moffit's brother came in and asked me to go to Bell's with him; I refused, but at last consented and went back with Moffit. During my second visit Mr. Burke was there; this was between 12 and 1 o'clock. He was in the room the whole time I was there.

Hazelip sat up on the sacking bottom and said he could not stand it. Burke told him that he must go through now, as he had commenced, and that if he did not, he would be liable to

M. Hazelip into the body and bowels of him, the said Benjamin M. Hazelip, a certain noxious and injurious clyster, which said clyster before that time, to-wit, on the day and year aforesaid, at the city aforesaid, had been prepared of various, noxious and injurious and dangerous ingredients; that is to say, of cayenne pepper, composition powder, nerve powder, and lobelia, by the said Francis Burke and William Bell; and that they, the said Francis Burke and William Bell, did then and there feloniously and wilfully administer unto the said Benjamin M. Hazelip, and did then and there feloniously and wilfully apply unto and upon the breast, stomach, belly, back, head, legs and arms of him, the said Benjamin M. Hazelip, a certain noxious and injurious hot vapor called steam, and did then and there feloniously and wilfully keep and detain the said Benjamin M. Hazelip under the application and action of the noxious and injurious hot vapor aforesaid called steam, for a long space of time, to-wit, for the space of three hours, and did then and there, and whilst the said Benjamin M. Hazelip was under the application and vapor of the hot vapor aforesaid, feloniously and wilfully administer unto, and did then and there feloniously and wilfully cause to be swallowed by him, the

FRANCIS BURKE

spasms. He made him lie down. Do not say he used violence to force him down, but he told him he must lie down, and he did lie down again. Mr. Burke then gave him some medicine to drink. He gave it as medicine and said he must take it. Hazelip refused to take it; Burke, however, prevailed upon him, and he did take the medicine. I then left him, and the next time I saw him, he was dead. I went away soon after the medicine was taken, and saw him again about 3 o'clock. He was, in the morning, apparently as well as I am. The next time I saw him, after I left the shop, he was on the steamer. When I saw him between 11 and 12 o'clock, I was with him about twenty-five minutes, and he was under the action of steam all the time I was there. While I was with him

the first time, no medicine was given him; I believe, however, Mr. Bell did give him some gruel. Put my hand before the steam pipe, but could not bear it there for the great heat. There was no change in the application of the steam during my first visit. The first time Mr. Burke attended to the steam. There were two rooms, and the pipe led from one to the other: it was a tin pipe. They were rooms close adjoining. No injection was given while I was there. Bell told me, however, that he had given an injection, and showed me the syringe he used. He did not say there was more than one injection, nor what composed it; did not ask him, nor any question about the medicine. Hazelip said that his insides were burning up and complained a great deal. Saw

said Benjamin M. Hazelip, a certain noxious and injurious drug, to-wit, lobelia; and that they, the said Francis Burke and William Bell, by administering the clyster as aforesaid, the hot vapor aforesaid called steam, as aforesaid, and the injurious drug aforesaid, as aforesaid, feloniously and wilfully did then and there cause and procure the said Benjamin M. Hazelip to become mortally sick and diseased in his body, and of which said mortal sickness and disease in the body of him, the said Benjamin M. Hazelip, he, the said Benjamin M. Hazelip, then and there died. And so the jurors aforesaid, upon their oaths aforesaid, do say and present, that the said Francis Burke and William Bell, in manner and form, and by the means aforesaid, him, the said Benjamin M. Hazelip, did then and there feloniously and wilfully kill, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the state.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Francis Burke, late of the City of Baltimore, yeoman, and the said William Bell, also late of the city aforesaid, yeoman, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the 17th day of September, in the year 1832, with force and arms at the city aforesaid, in and upon one Benjamin M. Hazelip, in the peace of God and of the said state, then and there being, feloniously and wilfully did make an assault, and did then and there feloniously and wilfully administer unto the said Benjamin M. Hazelip, and

no bed in the room. There were a table and chair in the room, but no other furniture except some trumpery; did not pay particular attention to what it was. There appeared to be no preparation in the room for a sick person. Heard Mrs. Hazelip say, she sent a bed to Bell's, but do not know what time she did send it. Mr. Hazelip was still on the sacking bottom at my second visit. Put my hand on the pipe at my second visit, and found that it was just warm. When I saw him the second time, he looked very pale, and he was wrapped up in blankets. I was there about ten minutes this time, and when I left him, he was still on the sacking bottom. He was, I could judge, about twenty-eight or thirty years of age. His constitution was healthy and robust. Had been

acquainted with him about two years. He was of active habits.

Cross-examined. Saw him on the Sunday evening previous to the occurrence at Bell's. He died on Monday; saw him on Sunday on the Susquehanna railroad, and went with him as far as Gwynn's tavern; walked two or three miles on the road, and when I came back, saw him again; he had been as far as Green Spring. He had been drinking, but not so much but that he was able to take care of himself. He came to town with me, and on the road the car stopped, and we got out and took a glass of wine together. His appearance showed he had been drinking before. Accompanied him home, and saw him next morning when at work. Previous to this had not seen him for a day or two; think I saw him

did then and there feloniously and wilfully apply unto and upon the breast, stomach, belly, back, head, arms and legs of him, the said Benjamin M. Hazelip, a certain noxious and injurious hot vapor called steam, and did then and there feloniously and wilfully keep and detain the said Benjamin M. Hazelip under the application and action of the noxious and injurious hot vapor aforesaid called steam, for a long space of time, to-wit, for the space of three hours; and that the said Francis Burke and William Bell, by administering and applying the aforesaid hot vapor called steam as aforesaid, did then and there feloniously and wilfully produce and cause a mortal engorgement of the blood vessels and veins of the lungs, brain and liver of him, the said Benjamin M. Hazelip, and a mortal effusion of the length of one inch, and of the depth of one inch, of a bloody fluid in and upon the brain of him, the said Benjamin M. Hazelip, of which said mortal engorgement of the blood vessels and veins of the lungs, brain and liver, and mortal effusion of a bloody fluid, in and upon the brain of him, the said Benjamin M. Hazelip, he, the said Benjamin M. Hazelip, then and there died. And so the jurors aforesaid, upon their oaths aforesaid, do say and present that the said Francis Burke and William Bell, in manner and form, and by the means aforesaid, him, the said Benjamin M. Hazelip, did then and there feloniously and wilfully kill, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government, and dignity of the state.

at his house, being well acquainted with him and frequently calling there, sometimes three or four times a week. Saw no appearance of his being on a frolic; cannot say exactly when I saw him previously, but it was within four or five days, as I often go to his house, and generally have found him engaged in his business. He was not a man of intemperate habits, but would sometimes take a glass; never saw him under the influence of liquor except the particular instance mentioned. He said that if he lived on the next Sunday he would have rode again upon the railroad. He was in excellent health and of active habits. He was intimate with Mr. Bell. He lived near the corner of Second street and Market Space, and kept a second-hand clothing store, and

often carried articles to Mr. Bell's to have them dyed. He never said to me that he would go through a course of medicine. The machine was formed of two planks boxed up at the ends, about the length of a man, and from two to three feet wide. He was rolled in blankets. The steam pipe came out of the other room, and ran into the box through the bottom: it was wide enough to lay on. Between 11 and 12 o'clock I understood he was going through a course, and was very much surprised to hear that he had the cholera. He said he felt very bad. I thought he had the cholera. Mr. Bell told me that Hazelip had the cholera, and he told me this in the presence of Hazelip. When I went there Bell told me it was a very violent case of spasmodic cholera. Hazelip did not say

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Francis Burke, late of the city aforesaid, yeoman, and the said William Bell, also late of the city aforesaid, yeoman, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the 17th day of September, in the year 1832, with force and arms, at the city aforesaid, in and upon one Benjamin M. Hazelip, in the peace of God and of the said state, then and there being, feloniously and wilfully did make an assault, and feloniously and wilfully did then and there administer unto, and cause to be received by the said Benjamin M. Hazelip into the body and bowels of him, the said Benjamin M. Hazelip, a certain noxious and injurious clyster, which said clyster before that time, to-wit, on the day and year aforesaid, at the city aforesaid, had been prepared of various noxious, injurious and dangerous ingredients; that is to say, of cayenne pepper, composition powder, nerve powder, and lobelia, by the said Francis Burke and William Bell, and that the said Francis Burke and William Bell did then and there feloniously and wilfully, administer unto the said Benjamin M. Hazelip, and did then and there feloniously and wilfully apply unto and upon the breast, stomach, belly, back, head, legs and arms of him, the said Benjamin M. Hazelip, a certain noxious and injurious hot vapor called steam, and did then and there feloniously and wilfully keep and detain the said Benjamin M. Hazelip under the application and action of the noxious and injurious vapor aforesaid called steam, for a

anything about it, and wanted to come off; he was very anxious to come off of the steamer, but they would not let him. At the first time the steam pipe was so hot that I could not bear it. At the second time it was cleverly warm; this time he raised up, and Bell said he must lay down or he would have spasms. He appeared much exhausted, raised up and set on the plank. Bell made him lay down, and he administered some gruel; do not know what Burke gave him at my first visit. Bell remarked that if he had come an hour later his case would have been desperate. Bell said that Hazelip was in a very fine way, and that he was doing well. Left there between 12 and 1 o'clock, and when I returned Hazelip was dead. The blankets were rolled around him when I saw him on the steam cot, and he was very restless, moving about backwards and forwards. At this time, between 12 and 1 o'clock, the pipe of the steamer was cleverly warm. Hazelip complained very much that he was burning up in his insides, and said he could not go through it.

Amos West. Went to Bell's house about the middle of September, in consequence of hearing from my children that Mr. Bell had taken cholera; had a great curiosity to see the cholera, so went down to his house. Met Bell in his dye house, and was very much surprised, as I had heard he had the cholera. He said he had a patient undergoing the steam operation who had it, but that he was not sick himself. Went upstairs, and saw Mr. Hazelip lying on the box, Mr. Burke being at this time in the room. Bell mentioned he had nothing to do with it, that it was Burke's case, that he had consented to Burke's using the apparatus. Hazelip had some clothing wound round him, and appeared in a great deal of agony from the complaints he made, and from his appearance. He complained very much of the heat, and observed that the operation was a severe one. Felt some curiosity in the case, and examined him and felt his pulse; it was very rapid. Requested him to put out his tongue; he did so; it was very red and very warm; was induced to examine it from hav-

long space of time, to-wit, for the space of three hours; and did then and there, and whilst the said Benjamin M. Hazelip was under the application and action of the hot vapor aforesaid called steam, feloniously and wilfully administer unto, and then and there did feloniously and wilfully cause to be swallowed by him, the said Benjamin M. Hazelip, a certain noxious and injurious drug, to-wit, lobelia; and that they, the said Francis Burke and William Bell, by administering the clyster aforesaid, as aforesaid, the hot vapor aforesaid called steam, as aforesaid, and the injurious drugs aforesaid, to-wit. lobelia. as aforesaid, did then and there feloniously and wilfully cause and procure a certain mortal engorgement of the blood vessels and veins of the lungs, brain and liver of him, the said Benjamin M. Hazelip, and certain mortal spots of inflammation of the length of one inch, and of the depth of one inch,

ing understood that in the cholera the tongue was always very cold. His eyes were very red, and appeared to be inflamed. Had also heard that in cases of cholera the feet were shriveled; examined his feet only by feeling; the toes did not feel as if they were shriveled; did not see them. He had no spasms when I saw him. He said he had no purgings or evacuations. Put my hand under the clothes; it felt warm, but I could bear my hand there without inconvenience; did not touch the steam pipe. Was there from fifteen to twenty minutes, and Burke was there all the time I was. Bell was there most of the time; he went out, and was up and down frequently, and Mr. Moffit I saw there, I think. Hazelip was under the application of the steam all the time. Bell said he could ease the steam off, and went out to stop some part of the pipe for that purpose, which I understood was done by means of a cock. There was something given him by Burke while I was there, and he leaned over the cot and was very sick, and made several attempts to vomit, but I believe did not throw up any-

thing. Burke gave him some medicine, but did not know what it was. Knew Hazelip by sight. The medicine was poured out of a phial into a cup, and given to him out of the cup.

Cross-examined. When I went into the room my object was curiosity, as I was anxious to see a case of cholera. Do not recollect of making any remark to any one in the room. Bell had shown me the steam apparatus some time before. The heat when I was in the room was not very severe. At the time I left the house did not think him so near his end. Thought steaming a very severe operation, and had very different impressions of the treatment from what I had before I saw it. Wanted to satisfy myself about the cholera was my reason for going in. The man complained much of the treatment; had my doubts whether he had the cholera. He repeated that he could not stand the operation, and begged them to desist. Did not see him afterwards until after his death; heard that he had died about 3 o'clock, and I did not see him until the coroner's inquest was held. The jury

in and upon the internal surface of the stomach and bowels of him, the said Benjamin M. Hazelip, and a certain mortal effusion of the length of one inch, and of the depth of one inch, of a bloody fluid upon the brain of him, the said Benjamin M. Hazelip, of which said mortal engorgement of the blood vessels and veins of the lungs, brain and liver, mortal spots of inflammation upon the internal surface of the stomach and bowels, and mortal effusion of a bloody fluid upon the brain of him, the said Benjamin M. Hazelip, he, the said Benjamin M. Hazelip, then and there died; and so the jurors aforesaid, upon their oaths aforesaid, do say and present, that the said Francis Burke and the said William Bell, in manner and form, and by the means aforesaid, him, the said Benjamin M. Hazelip, did then and there feloniously and wilfully kill, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the state.

of inquest met about dark. Think it was spoken of as a case of cholera, and whatever doubts I had did not express them.

Anthony Moffit. Am brother-in-law of Mr. Hazelip. Saw him about 8 o'clock; he came to my store and borrowed a couple of blankets; as he was going through he laughed, and appeared well and in good spirits. Next saw him at Bell's between 10 and 12 o'clock. Mr. Bell, Burke, and a small girl, were present. Mr. Hazelip was on the steamer; he was very warm; the perspiration flowed very free in large drops, and his face was flushed. He appeared very restless. Mr. Bell told me that he came to go through a steam, but that he would not let him without the assistance of Mr. Burke. Did not understand which went after Mr. Burke, whether it was Hazelip himself or Bell. He said when he was on the steamer that he could not stand it any longer, and appeared very restless. Burke and Bell talked among themselves; said to them that if either of us were in the same situation we would be as uneasy as he was. Burke said he did not think so; that he (Hazelip) was quite childish. Burke showed me the syringe that they gave the injection with. He said that they (Burke and Bell) did not wait for medicine to operate. He said the injection was composed of lobelia, cayenne pepper, and number six. They gave him medicine while I was there. Burke once, and I think Bell once, and Bell gave him gruel also. Remained near an hour; he was in the steam cot all the time I stayed; did not stay in the room all the

time, it was very warm and very uncomfortable. Found him on the cot when I went, and left him on it when I came away. The steam pipe was so hot I could not bear my hand on it, and they would sometimes blow the steam off by turning it. If the steam in blowing off made any noise, did not hear it. I do not think it did. Under the cot was very warm; could not say but that at all its parts it was of the same temperature. There was in the room a table and a chair or two, and some lumber, but there was no bed in the room. Left him on the steam cot, and was going, when Bell seeing I was going, and that I was very uneasy, said he would forfeit fifty dollars if he would not be well in two hours. Felt his feet, but felt no cramps in them. Bell and Hazelip were intimate. He was about twenty-eight or thirty years old, enjoyed tolerable good health, was an active and muscular man, quite as strong as I am. He was a temperate man, I considered. Saw him on the railroad the Sunday previous, and was at Gwynn's tavern with him. He showed then that he had taken a glass, but a stranger would not have noticed it. He was perfectly sober when he got the blankets. On my second visit, saw him close by the steam bath on a bed between 12 and 3 o'clock; about 3 he was in a state of insensibility, and could not speak. Bell was with him; he said that he had sent for a physician. I offered to go for one, and went for Dr. Hintze; and as he was not in, I met Dr. Knapp in Market street, and told him I wanted him to go and

see a man who was undergoing the Thomsonian practice; he said he would not go; urged him to go; he then said that if it was a friend of mine he would, and did accompany me. No physician had been there when I left him. He did not know me at this time, and was insensible. There were about two hours intervened between my first and second visit. Dr. Cole was there when I returned with Dr. Knapp. Bell was in the room. Burke had gone to attend another patient before Knapp came; believe it was a lady named Jenkins. Hazelip's apprentice boy brought me word.

Cross-examined. Was in the room when Dr. Knapp bled him; Burke was not there when I went for a physician, nor when I came back; do not think I saw him the whole day. Might have reproved Mrs. Hazelip for her anxiety, but do not think I did, do not recollect telling her that I thought Mr. Hazelip was doing very well, and that it was a very fine apparatus; told Mrs. Hazelip that they told me that he was doing very well, but do not recollect exactly what I did tell her at that time; did say the machinery and apparatus was a very fine apparatus, for that kind; meant the machinery looked very well. When I told Mrs. Hazelip my impression was he was doing well, and would get well, I did so to quiet her uneasiness, as she was very uneasy; went by their opinions, and gave their opinions as mine to her; knew nothing but what they told me; was alarmed, but Bell and Burke relieved it by saying he was doing well.

M. B. Townsend. Saw Mr.

Hazelip the day of his death, about a quarter before 10 o'clock, and stopped to talk to him. He appeared well, and I did not see anything wrong about him. Never saw him afterwards; heard, that at 3 o'clock he was dead. He was active, and apparently in good health. He lived in my neighborhood for two or three years. He would sometimes take too much to drink, and on the Saturday evening previous to his death he drank too much.

Cross-examined. Saw him in my store; he came to pay me some money he owed me; he certainly had been drinking; only saw him on Saturday, at about 5 o'clock.

Dr. Isaac Cole. Was called to Mr. Hazelip between 2 and 3 o'clock. When I arrived, Mr. Bell and Mr. Burke and the patient were all in the room. He was lying on a small trundle bed near the box which they used for steaming. Considered the man laboring under an engorgement of the blood vessels of the head; he was entirely insensible; his face was flushed, his eyes were red. These symptoms and the very great difficulty of breathing led me to this conclusion. Mr. Bell asked me to take charge or administer some relief, if possible, and said they had been steaming him. They did not tell me further than to say they had been steaming him. Mr. Burke appeared very anxious I should afford him some relief; told him that if I could abstract blood, it was his only chance; told Burke, that if I bled him and he died, he would say the doctors had bled him to death. Burke was then feeling

his temples. He said he would give the case up to me. I told him that I would not consent to that, but that if I could afford him any relief from the situation in which he was placed, I would do so. Saw the injecting instrument; they said they had given him an emetic. Bell said I should bleed him, when I said it was the only course, and seemed anxious I should do it. Found his situation would not admit of general bleeding, as he was rapidly sinking. Made an incision over the temporal artery, but did not succeed in drawing blood. Then told them they might apply mustard plasters to his arms and legs. Saw then that he would die, and that further treatment was useless. Left the house a few minutes and saw Dr. Knapp and called him; he entered the room and saw that I had attempted to divide the artery. Dr. Knapp said he would try if he could do it; he made the attempt and succeeded in getting as much blood as filled his ear two or three times; for it ran down into his ear. He expired in about half an hour after I first saw him; thought, when I first saw him, he would die. The engorgement of blood was very great. Mr. Bell insisted upon my endeavoring to relieve him, and was very anxious that I should bleed him. He was then holding the man's head; observed to Mr. Burke that my treatment was different from his. He said I was called in to take charge. Told him it was not my case and I did not so consider it. It would have been impossible for him to have recovered if he had not been bled. Met his wife on the steps, and it was as much

to satisfy her, as she appeared much distressed, that I attempted it.

Cross-examined. Burke left the room for a few minutes after Dr. Knapp came. Met Mrs. Hazelip on the stairs. There was in the room a table, some medicines on it, and a small trundle bed. Had to unwrap the arm to get at the pulse. We found on the examination after death, the brain, the lungs and liver engorged with blood, the lungs more than the brain, which corroborates my opinion. There was an effusion of bloody fluid through the brain. The brain and lungs in other respects appeared healthy. The heart we found in a healthy condition. The liver, as I observed before, was engorged with blood. The stomach and bowels were carefully examined, and here and there we found patches of inflammation. The other organs appeared in a healthy state. The circulation is stopped by an engorgement of blood; think this engorgement was produced by the treatment administered, taking everything into consideration, the means used, the appearance after death, and looking at the causes to produce that appearance. If he had been subject to intoxication, such treatment would have still more aggravated it, the tendency of steam being always to produce a great excitement of the system; this and the vomiting had a tendency to force the blood to the head. The effect of stimulants at any time is to occasion the same result. This disgorgement of blood on the brain must have been recent, as it could not have continued, and the man have

lived. The inflammation on the bowels had the appearance of being recently produced. Steam baths are sometimes resorted to; such for instance as that used by Dr. Jennings, but I have never used one except by the application of hot bricks. His looks were of a full habit, and appeared about twenty-seven or twenty-eight years of age. Cayenne pepper is a strong stimulant, and is, I believe, never used as an injection, but by the advocates of this system; but I have known brandy used under particular circumstances. The summer before last when many died of drinking cold water, I used brandy, and sometimes procured relief. I never knew lobelia to be used by any, except the advocates of this system. The effect of lobelia it is said, is to act as a purgative. I have never used it, and have no knowledge of it myself. Cayenne is an active stimulant; lobelia is also. Lobelia I do consider ought not to be used by any but those who are judicious and acquainted with its effects and qualities; consider it a dangerous article, and think it improper to be used without experience of persons of good judgment. His pulse was too feeble to be bled from the arm.

Bell sent for me at first. Was examined at the Coroner's inquest, which was held about 8 o'clock in the evening. Bell and Burke both stated before the jury that they had administered lobelia and cayenne pepper, and that it had the effect they intended. They said the injection was composed of No. 6, and the composition powder. They gave what I consider large

doses, a teaspoonful of lobelia. I am not certain how much is an ordinary dose, ten or twenty grains I think, but do not know how to measure by teaspoonfuls. The cayenne pepper was given in the composition powder. The medicine produced vomiting. They have a powder, No. 6, given as an injection with lobelia also, with a nerve powder. The injection was of No. 6, and they referred to the book; the cayenne is one of the ingredients of No. 6.

Recollect a case in which I have known Mr. Burke to have administered. At the time the cholera was raging, a female was attacked in French alley. She was in a back room. I felt her pulse; it was laboring under cholera. Burke was treating her. It was too dark in the room for me to see much of her situation. I then left her. Burke said she recovered. I saw her on Saturday, and on Monday I met some of the members of the society, who said she was mending. I am not aware of having expressed any surprise.

Saw nothing like cholera in the case of Mr. Hazelp; there was no cramps, but there was convulsions. The lungs were slightly adhered to the chest, but that could not have produced his death. There was some disease of a chronic character, but it could not have caused his death. I consider the effect of the treatment was to aggravate these slight chronic diseases; they could not have produced his death; and for all the effect they could have caused, he would have lived to an old age. When I first came, there was a tendency to convulsions, which I attributed

to the pressure on the brain. They have a powder they use, which they call No. 6; I have seen it.

December 13.

Dr. Cole. When I reached Bell's, Hazlip was lying on the bedstead; the windows in the room were all down; the patient was wrapped up in blankets. A sudden check of perspiration is likely to produce serious consequences, particularly where there has been a great excitement of the system; and a sudden check of the perspiration would be likely to produce those symptoms of congestion which I alluded to yesterday. The day was very pleasant and fine; the air was clear. The mischief was done before I entered the room. The man was sponged with cold water by Burke, while in a state of perspiration. Did not know, until they told me, before the jury of inquest, what they had done, and the treatment they had pursued. The sponge was used, while the steaming was going on. He was in a profuse perspiration when I reached there. He was sponged with cold water on the face and breast, while steaming, I attribute the symptoms to the operation of the whole treatment; from the steam and internal stimulants administered. Cannot explain why the patches of inflammation were in the bowels. If the strong stimulating medicines used, had come in contact with the bowels, they might have produced general inflammation. No one part of the stomach is more likely or predisposed to inflammation than another. Neither is one part of the bowels more liable to inflam-

mation than another. When I felt his pulse it was very feeble, and that was the reason I did not bleed, or attempt to bleed, from the arm. The redness of the face and eyes indicated congestion, and I thought it necessary to abstract blood from the artery; could not in his then state, adopt general bleeding. Am not acquainted with lobelia, and have never used it; always considered it a very dangerous medicine when administered by persons not well acquainted with its effects, and I have always found other medicines to answer the same purpose. Dr. Cutler was, I believe, the first one who has introduced lobelia into recent notice. It has been recommended by physicians as a specific for the asthma; believe a distinguished physician used it upon himself, and took it in the form of a tincture, by dissolving it in spirits, and threw as much into it as the spirits would abstract. All our medical works mention lobelia as dangerous, and I do think it a dangerous article, in unskilful hands. About ten grains of lobelia, in dry leaves, is an ordinary dose; this is sometimes increased to twenty grains. The valerian is used as a nerve. They have a powder they call No. 6; am well acquainted with it. Am frequently subject to a nervous headache, and, in one of my visits to a friend's house, at his request, I took a little of it to relieve my headache, but it had not the effect. The lungs in the case of Hazlip, were more engorged than the brain. There might have been a strong predisposition to that engorgement. The tendency of the vapor bath

is to excite all the vessels on the surface of the body, and unite the circulation on the surface. In this case, I discovered the brain, bowels and lungs were affected by this steaming. It would not have a tendency to relieve congestion, if the steam was continued for a length of time. All the circumstances led us to the conclusion that he came to his death by the treatment pursued. If it were not for the testimony at the post-mortem examination, by which we learned the treatment which had been pursued, we might not have been able to come to any positive conclusion upon the subject; it was only by hearing the treatment, and then an examination of its effects, that we came to the conclusion. When I made the attempt to open the artery, I told Bell to apply mustard plasters to his feet and arms. I then went away. I did not know any other physician had been sent for. The only change I caused in the treatment was the attempt to sever the artery and the application of the mustard plasters. Dr. Knapp, when he came, asked for a lancet, and cut the artery. Burke was then holding the head of the patient, and also washed his face with camphor. The windows were open, and Hazelip was wrapped up in blankets. The windows were continued open during my second visit. The head of the patient was slightly elevated, but I do not recollect that a chair was placed behind him, or what was there to elevate it. There are two windows in the room. The room is a small one. The door was also open. Dr. Knapp was then in attendance, and I

left the man, thinking he must die. Mr. Moffit was the person who went for Dr. Knapp. Mr. Bell sent for me. When there is an engorgement of the blood vessels, we bleed without reference to perspiration. Mr. Burke has been practicing for some time. He has on several occasions invited me to attend with him, to see his cases, and it was in consequence of this general invitation, as well as a special one, that I went to see his patient in French alley.

I attended a family who had Smith and Thomson's system of medicine in their house, and were very partial to it; but they would never administer without advice. They frequently urged me to abandon the system I practice and adopt it, alleging that if I did so I would find it profitable. At the decease of this gentleman his books were presented to me. The common characteristic of cholera is congestion, not inflammation. Did not discover in this case any symptoms of cholera when I first went, nor did I find any on the post-mortem examination. Never had an opportunity of being present at the dissection of a case of cholera. With regard to cayenne pepper, we might perhaps give six, eight or ten grains; a teaspoonful is about thirty grains; weighed it to ascertain the quantity. I would not under any circumstances give more than the six, eight or ten grains more than two or three times a day. It is my deliberate opinion, formed from what I saw while in the room, as well as at the post-mortem examination, that his death was occasioned from the treatment

which he received. The report of the inquest was drawn up by Professor Geddings. The jury asked our opinion, and we retired to consult upon the case; our opinion was given unanimously. Know of no blank sheet being signed by the physicians. The report was signed by all the physicians present. We examined all the witnesses before the jury of inquest.

Barnet McCauly. Saw a man in the steam bath; did not see him after his death; do not know positively that it was Mr. Hazelip, but believe it was. Went there through curiosity to see a man going through the steam. Mr. Seabrook told me that there was a man upstairs who was going through the steam. He lives with Mr. Bell. When I got up to the room, I found Burke, Bell and Mr. Moffit there. This was about 11 o'clock. Hazelip seemed to be in a very uneasy situation from perspiration. He asked how long for God's sake he would be kept there. The reply was that it would all be over in ten or fifteen minutes. Do not suppose that I stayed more than fifteen minutes; he was on the steam cot all the time I did stay. There was nothing said about Dr. Hintze being sent for. Saw them give him nothing, but saw Burke reducing the steam. The steam came very rapid. The pipe was very warm, and I was obliged in feeling it to put my handkerchief between it and my hand, and then it felt very warm. The place where I felt the pipe was about the center, between the fire and the steam cot, and this was about five or seven minutes before I went

away. They did not apply anything more than phials to his nostrils, nor did they give him anything while I was there. He did not ask to be released more than once. He did ask how long he would be kept, and received for answer not more than ten or fifteen minutes.

Professor Geddings. When I first saw Hazelip he was dead. Was requested by the Coroner to conduct the post-mortem examination. The coroner informed me that a man was treated by the Thomsonians, and that he was found dead; found his body in the third story of Bell's house, and examined it externally, but found no marks of injury except the artery which was cut by Dr. Cole, and a slight abrasion on the instep of the right foot, not of recent origin. There was great rigidity of the body, the muscles were very rigid. On laying open the cavity of the chest the lungs were found much engorged with blood, the surface of the left lung adhered slightly to the chest; this appeared to have been of long standing, and to have had nothing to do with the recent circumstances. The heart was found perfectly healthy. The heat in the cavity was very great, more so than I was accustomed to see such a long period after death. The same elevated temperature was found in the cavity of the abdomen. The stomach when laid open was found to contain a dirty looking fluid, part of which was mucus, and part perhaps what had been administered. On the lining membrane of the stomach there were several patches of inflammation of considerable extent. The surface

of the membrane exhibited some symptoms of disease of long standing. Some papulae which had nothing to do with the present case. The small intestines were lined with mucus. The lining membrane had also patches of inflammation in lines or streaks. There were also some points of deep color, bloodshot appearance. The evidence of inflammation in the large intestines less manifest; their contents were considerable; they were the natural contents of the organ. Towards the lower parts called the colon of the intestines, there were several inches narrowing. This contraction I conceived of old standing, and had no connection with the present case. The surface of the liver exhibited small white globular spots, called tubercles, varying from the size of a pin's head to that of a pea. The same tuberculous degeneration existed in the substance of the liver, the vessels were slightly congested. The other organs in the cavity of the abdomen were healthy. The appearance of the liver was that of old standing. We next examined the brain; the serous coverings of the brain was somewhat injected with blood; there was also a slight congestion of the vessels of the substance of the organ. There was a bloody fluid in the cavities of the organ, and its lower surface. After the organ was removed a considerable quantity of this fluid sunk into the cavity in which the spinal marrow is contained. This is all I am able to state relative to the post-mortem examination. Have heard what Dr. Cole has stated; it is substantially the same as I should

have expressed. We all concurred in the examination. There were patches of inflammation on the stomach and intestines, which appeared of recent origin. The morbid appearance of the brain and covering I conceived of recent origin. The slight congestion of the liver was also of recent origin, but taken separate from the rest, should not have considered it of much importance.

From the post-mortem examination, and the testimony given before us at that time, I concluded, and it is now my opinion, he came to his death by the medicines which were administered, particularly the lobelia and the steam, which were applied at the same time. Mr. Bell, Dr. Cole, Dr. Knapp, Mr. West, and Moffit, were examined before the jury of inquest: consider the steam and the lobelia as having caused the most injury; consider lobelia as a safe medicine when administered in proper doses, and with discretion. Have the same opinion with regard to the steam bath. Have seen similar appearances in death from other causes. Came to my conclusion from the post-mortem examination and the testimony produced at that time. Should not have arrived, perhaps, at the same conclusion from the appearance, without taking into consideration the treatment pursued. Should have considered, from the history of the circumstances, and the evidence before us, and am decidedly of opinion he had no serious disease when he went to the steam cot. The immediate effect of steam carried to the extent it was in this particular case, was

to occasion an inordinate excitement of the system, acting as it did on the whole surface of the body, and of course effecting the whole system. The effect of this excitement would be to increase the circulation, and consequently to produce a greater flow of blood to the heart and other organs. Under these circumstances, those vessels which receive the greater quantity and flow of blood would be more likely to suffer by the extraordinary excitement. The organs are the stomach, the intestines, the liver, the lungs, the heart and the brain. The kidneys frequently suffer under similar treatment, as was followed in this case, but did not notice any particular marks in this particular case. The effect of this would be to exhaust the organs of their powers, and to give rise to inflammation in some of the structures.

The system is able to undergo a higher temperature in a dry than a moist bath. With regard to cayenne pepper, it is called a stimulant; its effects not so widely diffused as some others. The jury themselves are able to decide how large a quantity can be used with impunity; but when the system is highly excited, it is very mischievous; it is sometimes used to relieve the organs when they are languishing. A system inordinately excited would be very injuriously affected by cayenne pepper. To illustrate it, a glass of wine may be taken when in health, and enlivens the system; but in acute inflammation it would be endangering health. I consider that half a teaspoonful to a healthy system would produce

no injury. Lobelia is an active stimulant, and a narcotic remedy. Have frequently administered it in small doses; it produces an excitement and a tingling sensation at the finger ends. In large doses, say ten or twenty grains in substance, it produces vomiting and sometimes purging. The usual dose of the tincture is from thirty drops to a half ounce; the medium dose is one drachm in tincture; generally give it in teaspoonful doses.

Consider it highly dangerous when the system is excited to administer cayenne pepper. A teaspoonful of tincture of lobelia is given, up to about half an ounce. Have seen many post-mortem examinations. During the prevailing epidemic I have seen about twenty, and have seen the same redness, but a great dissimilarity as regards the fluids and the natural contents of the organs. In cholera cases, after the spasms develop themselves, the watery evacuations continue, and frequently until death. In every case of cholera I have seen, the watery evacuations have existed more or less, but spasms have not always. I have seen within two or three days a case of cholera without spasms; have examined from fifteen to twenty cases during the epidemic. The internal warmth is frequently an accompaniment of the cholera. The warmth often continues for a long time; would not wish to convey the idea that the warmth I have heretofore mentioned in the cavity, proceeded from the vapor bath. Have frequently used lobelia; never have known it from my own observation to be administered in larger doses

than a teaspoonful at one time; larger doses I do consider dangerous. To all the questions we put to Mr. Burke, he made the most candid replies. Thought I could perceive that there would be an examination of the case afterwards, and told him that if he would in any way by his answers implicate himself, not to reply; he, however, was very candid, and did answer all the questions asked before the jury of inquest. He told us he had administered a teaspoonful of the powder of lobelia, and not producing the effect, he gave a second dose not quite so large; he also stated that he had administered a heaping tablespoonful as an injection. That he had given it but twice into the stomach. He further said that he had administered the composition powder and the nerve powder. There was something said of No. 6, but do not recollect whether by Mr. Burke or someone else.

In giving lobelia or any other medicines as an injection, it requires a larger quantity, the parts being less susceptible, less highly organized, and less sympathetic relation. Generally, a double dose is given as an injection, and it always requires stimulating properties to operate the bowels in this way. When the injection operates, it would depend upon the time it had been retained; if a long while, the effect might be mischievous, although discharged. If I had known nothing of this case except from the post-mortem examination, I could not have said that he died of the steam or the lobelia. In Russia they go from a vapor bath into a cold room immediately with im-

punity. I confess, my own impression is, that it would be very dangerous here. A sudden check of perspiration is always dangerous. The check of the perspiration in this case was brought about but half an hour before death; time had not elapsed to produce congestion from that cause. The powder is much stronger than the tincture. Burke stated that what he was administering he did not consider fresh, and consequently not strong. He said he frequently administered lobelia in much larger doses with good effects; told him this did not agree with my own experience. This was my reason for asking why he administered in such large doses. Burke said he sponged the man, and that he regulated the steam. When he noticed an excitement, he sponged him about the neck, head and breast, with cold water; and this, while under a profuse perspiration; he said that when the man became too much excited, he regulated the steam by reducing it. Burke answered all our questions with the greatest candor.

Dr. Hintze. Saw Mr. Hazelip on Sunday evening; he desired me to prescribe for him; seemed very much excited and agitated; complained of being fatigued, and said he was afraid he would get the cholera. He said he had been riding on the railroad. He asked me if he had not better take something to prevent the cholera; always disapproved of preventive medicines. He inquired my opinion and the propriety of his undergoing a Thomsonian course. Told him any man was a fool,

unless he was sick, to take medicines. He said if he took a course, he would not be liable to the cholera for the season. My reply was, perhaps if he took the course, he would take no other disease. Examined him as to his bowels—he had undergone some fatigue. Advised him to go home and apply a feather poultice to the back of his head, and a bread and butter poultice to the inside of his stomach, and he would be well. He said his bowels were regular. Told him none but quacks administered preventive remedies. This was about 11 or 12 o'clock at night. He had been drinking. Occasionally he would take a frolic on Saturday evening. Attended his family for four or five years, and knew he was easily excited. He said he had drunk several glasses. A man easily excited would be very readily excited by any stimulant. He was of a sanguineous temperament.

Dr. Potter. Have heard all the evidence given, and do not consider that the medicines used in this case are generally used by regular practitioners. Upon a healthy system I think there is no use of applying them. A man in health needs nothing as medicine. It is an experiment which may do much mischief, and can do no good. These remedies always produce more or less mischief in large doses. The system is not indifferent to these medicines under any circumstances. Cayenne pepper is not a poison, but when given in a state of great excitement, produces mischief; it produces increased secretions. Lobelia is sometimes introduced as a

remedy for the asthma; the system then will take a large dose; in other cases, such as a liability to inflammation, if it does not act as an emetic, it does as a purgative. The hemlock is a narcotic, it has not the same effect as all narcotics. It is a poison when given in large doses. The use of warm or vapor bath is of great service, if properly regulated and used with judgment, it excites the surface, which is sometimes serviceable in the form of vapor. The system cannot continue it as long moist as dry. Dr. Jennings has tested the theory of vapor baths. I have used lobelia in asthma and affections of the lungs, and some other diseases. In a high state of excitement, it ought not to be administered. It produces excitement by vomiting. They have stated the inflammation to be in patches in the bowels; some part of the bowels will always be affected by it when taken in large doses, if not ejected immediately. If a man understands the construction of the system upon which they are to act, and administers with care, they are safe. We have sometimes more difficulty to prevent persons taking medicines than to induce them to do it. Hemlock is a poison. I know it well—it grows three or four feet high.

Dr. Cole. Stated when I was up before, or intended to do so, that I believed cayenne pepper was administered.

Dr. Geddings. Have no recollection of Burke saying cayenne was given in the stomach. Universal experience has proved that when there is a predisposition to any disease, a strong excitement of the passions may

lead to that result; for instance, fear or grief acting upon a system easily excited at a time when there is a predisposition to any disease, may produce that disease. The use of ardent spirits, acting upon a system that would be easily excited,

and at such a time, might be a predisposing cause of cholera. Steam will produce spasms in the whole system. I stated that the contents of the organ only, were dissimilar to cases of cholera.

THE WITNESSES FOR THE DEFENSE.

Ward Sears. Am an apothecary. A person came to my place with a roll of blankets. Have since ascertained that it was the deceased; was then in Larrabee's store. He wanted me to take him through a course. He was purchasing medicine. Told him I did not attend to that business. Finished putting up his medicines, and he went away and said he was going through a course. Referred him to Francis Burke. Burke got medicines of me and practiced in cases of cholera, and I heard he was about to adopt the practice of medicine as his regular business.

Cross-examined. Believe he got some composition No. 6, nerve powder, cayenne pepper, and lobelia. He said he was going through a course; and I put him up as much medicine as I thought sufficient to carry him through. No. 6 is never put up in a powder; it is always a liquid. It was the same prescription I put up for him that I had done in cases of cholera. Do not practice the system myself. Keep the books and medicines for sale as agent for Thomson. Gave Mr. Hazelip the medicines but not the book. He did not become one of the subscribers to it. He paid me for the medicine, I think, thirty-

seven and one-half cents. Do give information more than is in the books, which is confined to the members of the association.

The Deputy Attorney General. What other information is given to the subscribers to the publication of Thomson more than is contained in the book itself?

The Counsel for the defendant objected.

The CHIEF JUSTICE decided that the question was not relevant to the case, that the investigation was not one which embraced the advantages of this system of medicine or the other system, but that it narrowed itself down to the plain language of the indictment, and to that question the whole investigation must be directed, that, therefore, he was of opinion that any question which went into the merits of the system of practice was not relevant to this case.

Judge NISBET said he did not altogether agree with the opinion of his learned brother, as he thought it necessary to a correct investigation of the charge in the indictment that an investigation should be had into the means which the party charged might have of obtaining information relative to the system which he practiced, and what

that information might be which he could so obtain, but that in the present situation of the court, there being a vacancy on the bench, there was no course left him but to acquiesce in the opinion delivered by Judge BRICE.

Ward Sears. I am agent for Dr. Thompson. Give no information except what is derived from the books and my own experience. Burke has been some time engaged in the practice of medicine; think about four years. He has held a right under the system for five or six years. Have lived for about five or six years in Calvert street. Burke purchased the right and lived in Washington. He has been in Baltimore, I believe, about four years. Never saw him in Washington, never having visited it while he was there. He did not always follow the practice, but did occasionally. From what I know and have heard of him, consider him very skilful and competent to practice medicine. Never was present in any one instance that he administered prior to the late epidemic. Burke is a printer by trade.

Dr. Janney. Have practiced medicine about five years in Virginia, but not very extensively. Was studying fifteen or twenty years with my father. He was not a regular practicing physician, but kept an apothecary, and never practiced for pay. I practiced for two years without pay, and my neighbors, anxious I should practice medicine, and not being able to do it gratuitously, I commenced it regularly. Have turned my attention a good deal to Thomson's medicines since I got his book, and

I have examined all the medical authorities to ascertain the effect of his medicines before I would consent to use them. Took it myself first to try its effects. Took five teaspoonfuls at different times in powder, and during the same day before it puked me. Have frequently taken it, always one teaspoonful at a time, this being about sixteen grains; have never taken more at a time, but I repeat it till it operates. Have used lobelia frequently upon others during the last two years, commencing with sixteen grains and waiting about fifty minutes, and then repeat the dose, but lessen the quantity, and continue it in this way until it operates. Up to the time I have mentioned, my medicines were of the kinds usual with medical men. From the experience of my father, and my own experience and the knowledge which I have obtained of lobelia, I should certainly say it was not a poison. Always use it when I want to cleanse the stomach. Have used the tincture of lobelia about two teaspoonfuls as an injection; sometimes less, sometimes more for injections. If I wish to reduce a fever, I give it in small quantities to produce perspiration; a greater quantity produces an emetic. Give sometimes a fourth of a grain of tartar emetic for that purpose and to produce perspiration, and mix with it some ipecacuanha. Have employed lobelia as an injection with tea made of bay bark. Have never lived in Baltimore. Hemlock is not a poison, as has been stated here, but it is perfectly harmless. It is taken from the bark of the pine tree, and is not poison.

FRANCIS BURKE

These medicines can do no harm in any case or under any circumstances; they sometimes may do no good.

Cross-examined. Practiced for five years under the old system of medicine, and for nearly two years have practiced the Thomsonian system. Was not made a convert by reading Thomson's book. The book induced me to examine and try the medicines, and since I have ascertained their effects have practiced the principles the book contains. Frequently use other medicines. Associate them with the others, and the more I have used Thomson's medicines, the better I am satisfied with their efficacy. Believe they are not injurious in any disease; in many they certainly are beneficial. Believe a man has a natural gift to ascertain the things of nature. Believe that life is heat and that blood is heat, and that blood and heat are synonymous as regards the animal system. Believe that all constitutions are naturally alike. Believe that a fever is an effort of nature to relieve itself of disease, and that such efforts may sometimes be carried too far, and to too great an extent. Do not think that all constitutions are alike in every particular, but that there are diversities and degrees in the constitutions of men. Believe that medicines adapted to the cure of all diseases grow spontaneously upon our soil, but that the discoveries of men have not yet found them out. Think men possess natural gifts to examine the things of nature; that is, that a man possesses a natural talent for some particular business—some, for instance, having

a partiality for mechanical pursuits; others, for other kinds of business. This I call strength of mind, and this I call natural gifts. Believe all constitutions are dependent upon heat and blood for life; and that the life is the constitution of man, healthy action and diseased action forming the two constitutions. Believe that all diseases of the human family are caused by the morbid circulation of the blood. To ascertain this, some judgment is required; and this we ascertain by the pulse. Twelve months is generally necessary to acquire a knowledge of the pulse. Some men can obtain this knowledge sooner than others; some in three months, some in twelve months. Students of medicine ordinarily, in about six months. Believe that nature never furnishes more blood than is necessary and required for health. Frequently have used the steam bath. Have carried persons through a course of Thomson's system; generally, we keep them under the effects of the steam for ten minutes. Have been myself under the effects of steam for thirty minutes, when I had the bilious fever. Took the lobelia and applied steam, with bricks and water poured over them while they were hot, and immediately had blankets wrapped round me. Am sure it cured me without having recourse to any other remedy; am also satisfied that I had the bilious fever. Have frequently used blisters, but think they are much oftener used than is necessary, and that it is a torture which ought not to be so generally adopted. Think fevers all have one common cause; that

they arise from a mucous lining the stomach, which cuts off and stops the supply which feeds the blood. The effect of this mucous is to stop this supply. Blood, I consider, is life, and heat is life. Have never studied anatomy except slightly, and have never had the advantage of attending any dissection.

December 14.

Ephraim Larrabee. Never was acquainted with Mr. Hazlip. Never saw him that I recollect of before the morning of his death, when he called at my store to purchase medicines, about 9 o'clock. He complained to me of great pain and pressure in the stomach. This was on the morning of the day on which he died. He expressed a great fear that he was going to have the cholera, and that he was then taking the disease, and said his bowels had been and were then much out of order. Was greatly surprised at his manner, and that he should have addressed himself to me, but could only account for it from his mistaking me for Mr. Sears. Thought he was not right from his manner, or that he had been upon a spree. Wanted to get rid of him, judging from his appearance that he was an intemperate man. Mr. Sears came in, and I gave him up to Mr. Sears, whom he then appeared to recognize. He told Mr. Sears he wanted him to take him through a course of medicine, and said he thought he was getting the cholera. Mr. Sears declined doing so, and told him he did not practice the system, but recommended him to go to Mr. Burke. He went away, and a

few hours after I heard that he was undergoing a steaming. Understood they had sent for several physicians. It was about 9 o'clock when he came to my store. My opinion of Hazlip when at my house is he was either a very sick man, or that he was laboring under great apprehension of having the cholera. His whole appearance was that of a man under great excitement. He complained of his bowels being out of order for some time. Expressed my surprise that he should have come up to me in the manner he did. Some one said he had been on a frolic, and his appearance justified such a belief; he was also certainly very much excited and alarmed. Mr. Sears had great difficulty in getting rid of him. Saw Mr. Sears go to the scales and weigh out the medicines for him. At this time the cholera was raging, and nearly at its height in Baltimore. This was, I believe, the 17th of September. Have known Burke for some time, and consider him very skillful in his practice; so much so, that I would trust myself into his charge in preference to any other physician. Knew of a case which was called cholera in French alley; a woman named Caroline Ruark. She was very ill, Dr. Cole told me. It was before the case of Hazlip. One of the first cases which occurred in French alley. The Board of Health were there at the time this case occurred. There was another case in the same place, a Mr. Nash, who is now in the penitentiary. These occurred on Sunday morning. Burke attended these cases, and was assisted by several others.

I was laboring under a severe diarrhoea, and being much debilitated, could not go into the house to assist them, thinking it imprudent to expose myself in the condition I then was. On Sunday morning, I recollect the circumstances very well, I was sitting at my door at the corner of Cheapside and Water streets, when Dr. Cole came by, and in a familiar way, as we had frequently spoken together of the cases in French alley, asked me how Caroline Ruark's case came on, with the expression, "I mean is she alive?" Told him she was not only alive, but that there were great hopes of her. He replied, "You cannot save her: the diarrhoea has progressed so far that you cannot check it, and without that you cannot save her; she must die." Went back and got some powder, and Mr. Burke will recollect my taking it to him. Burke administered in this case; he was the one that had charge of it. Did not see her; as I said before, I was very much debilitated, too much so to go in. Went to the house, but did not see the patient. I know the woman is now alive, although Dr. Cole then told me she could not be saved. He also stated to me that Micheal Jenkins, who was then sick, would get well. Micheal Jenkins died, and this woman did get well. Went to get the powder, and recommended it, because Dr. Cole had stated to me that the diarrhoea could not be checked. Went to see Mr. Burke, and gave it to him, and recommended it. The Board of Health were all there, with the exception of Professor Jameson. Frequently have rec-

ommended hemlock powder. Never saw the woman I have been speaking of until she was pronounced out of danger. Knew she was alive after this, in consequence of a man named Jenkins having orders to take up all such persons in that place, and his having seen her there. Dr. Swartze was also there, I believe, at the time this woman had the cholera.

Francis Burke. Am the prisoner's son. Mr. Hazelip, on the morning of the day on which he died, called three or four times between half past 9 and 10 o'clock, and solicited father to administer to him his own medicines. He had been there before I saw him, and had said that Mr. Bell had offered his cot for him to go through a steaming. He said he had his own medicines which he had purchased himself, and was very anxious to have them administered. The second time I saw him call, father was upstairs, and he dropped what he had and went with him. The first time Hazelip called was before I had got up.

Henry Sumwalt. Saw Hazelip at the time he was going through the steaming. On Monday, the day of his death, was passing by Bell's house, and saw a crowd, and understood a patient was there under treatment for the cholera. Went in, and found him in a profuse perspiration. Bell and Burke were both there, and the patient was on the steam cot. Asked Bell what had caused the cry I had heard of. Bell answered and told me that Hazelip had very violent spasms. Asked Hazelip how he then was;

he replied that he was then very much relieved. He was yet somewhat restless. There was some other conversation, which I do not recollect. I soon after went away. Burke and Bell seemed to be very attentive to the patient, who said he was somewhat easier. My inquiries of Bell relative to the cry I had heard of, and the occasion of it, were made in the hearing of Hazelip and within a few feet of the steam cot.

Cross-examined. Was in the room about fifteen minutes. It was about 10 or 11 o'clock. They gave him nothing while I was there; they applied some salts to his nostrils. Presume they had given him a clyster, but do not know positively. Did not see them give it, but I should judge they did from seeing the apparatus, which was lying on the floor, near the fireplace. Think Bell told me that they had given him an injection, but am sure he did not tell me of what it was composed. Did not hear the cries myself, but there was a crowd collected round the house, and it was from them that I heard of the cries.

Mr. Sage. Saw Mr. Hazelip on Monday, which was the day that he died. Saw him about half past 11 o'clock. Went there with Mr. Sumwalt, staid there with him and we came away together. All the time I staid there, Mr. Burke and Mr. Bell appeared very affectionate, attentive and kind to their patient. Believe he was asked how he felt, and replied that he felt much easier. Complained, however, of spasms in his legs; this was when the steam was off;

when the steam was on, and he was under the effects of it, he said he was easier. Remained there from a half to one hour.

Cross-examined. There was nothing given him while I was there, except a little water gruel. He did not vomit, nor had he any passages while I staid. I do not know that they gave him an injection. Went in with Mr. Sumwalt and came away with him. We were there near half an hour. When we first went into the house there was nobody in the room but Mr. Burke and Mr. Bell. Some time after, two or three individuals came in. Do not know who they were. Mr. Sumwalt spoke several times to Mr. Hazelip, and I also spoke to him. He complained a good deal of spasms in the legs. He was covered with blankets, laid over, and not wrapped round him. When he complained of the steam it was immediately stopped off by a stop-cock, which was attached to the pipe for that purpose, and which checked the progress of the steam. It was regulated several times, and was stopped at one time eight to ten minutes. It was frequently checked while we were there; and whenever he complained of the steam being too severe, it was stopped by the cock. When it was stopped off, and the patient got colder, the spasms came on, and the steam was then let on, as he said he felt easier. The size of the cot was about eight feet in length and three in breadth, and set on the floor. On the top was a sacking-bottom. Did not see any plank on the sacking-bottom. He was covered entirely with blankets.

While I was there, for the greater part of the time, Messrs. Sumwalt, Bell and Burke were all that were present. The steam pipe was entered under the box, and within about one foot of the end. It was a small tin pipe, perhaps two inches in circumference. Did not see any force used to continue him on the steam cot, nor do I believe there was any used while I was there. He was persuaded as any other physician would. He was not confined upon the cot, but seemed at liberty to go whenever he pleased, no force being used to compel him to stay on it. He did not desire, while I was there, to be let off. Did not hear anyone ask to send for a physician. They did tell him that if he could stand it he would be better; if not, they would let off the steam; but no force was used. Burke observed while I was there that it was childish to complain of the oppression of the steam, for if it was let off he would immediately have spasms.

Abner Pope. Was present at the house of Bell. Was coming up Second street, and when nearly opposite to Bell's house, I heard a distressing groan. Remarked to Major Stansbury, who was with me, that that was a cholera groan, and told him that as the cry seemed to proceed from Bell's house, the patient was over there. We finding no obstruction, immediately went upstairs, and as soon as I got into the room I remarked that there was a Thomsonian there. Saw a gentleman on the steam cot. He complained of violent cramps in the arms and legs. Gave him a roll of brim-

stone to clench in his hand, as I had heard that it had proved of service in cases of cramps, and I mostly carried a piece with me for that purpose; but I do not know whether it was any virtue in the brimstone itself, or whether it is merely the act of grasping something in the hand, that proves of service, but I know it has proved serviceable in cramps. He asked for another piece; but as I had but one, I sent out for another. He wanted it to clench in the other hand. It was soon procured and given to him, and he soon said he was better, and that they, or something else, relieved him very much. There was given him some composition tea, and he was hugged up in blankets, which produced a pretty good action of perspiration. We were then about going, and he said, "Pray, gentlemen, don't leave me." Remained, and told him I thought he was in a very good way, and that he was in good hands. Heard the groans in the street from the third story of the house, and immediately said, "There is a cholera groan." A cholera groan is one of great distress, a piercing cry, the groan of one in great pain. Have seen many afflicted with cholera, or what was called cholera, previous to this case. The symptoms were similar in this as in other cases of cholera. Had but one piece of brimstone, and carried it with me to try its efficacy in cases of cramps, but for no other purpose. Sent out to get the other piece so that he might clench one piece in each hand; recommended him to clench it, as I had often heard that

brimstone used in that way would remove cramps. He was exceedingly alarmed, and to my mind, frightened, and said, "Pray, gentlemen, don't leave me." The brimstone was simply held in the hand; a roll of it about four inches long. Had heard from those to whom I had recommended it to be tried in this way, that it had proved serviceable. Never tried anything in this way except brimstone, in order to prove whether any other hard substance clenched in the hand would remove cramps, and do not know whether it would or not. My impression was, and always has been, that it is the brimstone which has this effect. Gave it to him in one hand, and sent and got the other, which was also given to him.

After this, he covered himself up in blankets, and no person took it from him that I saw.

I examined the man while he was on the steam cot. He then complained of cramps; his face was a little flushed. Did not remark his eyes. The flushed face is not always an accompaniment of the cholera until after steaming. He said that he had cramps. Do not know it, except from his assertion, that he had violent cramps, and I should judge that they were violent from hearing the cry in the street. Do not positively know that the cry proceeded from Hazelip, but believe it did, as I knew it was some one who had the cholera. He shook; whether from fright, cholera or spasms. I know he was much alarmed. When I went into the room, his arms were not covered; they

were placing blankets around him, and gave him a little composition. There was no discharge from the bowels while I remained. I cannot explain exactly how I can distinguish a cholera groan. It is a groan of great distress, and I was sure the groan I heard proceeded from some one laboring under the cholera. Am no professor, only in my own family, where I make use of Thomson's medicine entirely, and no consideration should deprive me of it. It has always answered the purpose I intended it should. Did not feel Hazelip's pulse while I was there. Took hold of his arms. Use the Thomsonian medicines myself. Took a little nerve powder this morning, expecting a keel-hauling from what I had seen Dr. Cole undergo when he was called up. Own a right, and am a member of the Friendly Botanical Society. One of the provisions of becoming a member is, that we are bound to give all important information to others who may purchase the rights, and may become members of the society. There is some other information more than is obtained from Thomson's book, which we are bound to communicate to each other, but which I do not feel at liberty to tell here.

The *Deputy Attorney General*. The witness should be directed to declare what this information of importance which the members profess to communicate to each other was. The publication of Thomson shows upon its face that there is other important information connected with the practice of this system; and to obtain which, he refers those

who purchase the book to some other source. Now it is necessary to a correct understanding of this question, that the court and jury should understand the nature of the information, and the object in referring to another source to obtain it, instead of the book itself. This was important to be known in this case, to decide how far these men are practicing a system which the knowledge they have of it proves to them is pernicious in its effects, and this information should be communicated to us to enable us to understand the tendency of the administration of the system of practice which we are now investigating.

The CHIEF JUSTICE. We are anxious that the case now before us should be understood as not an investigation of any system of medicine. Some latitude had been allowed in the investigation, but it was only by consent of the parties; but when an objection was raised to the question, we were bound to say we did not consider the question as relevant to the case. If the investigation was to be allowed to proceed, and the discussion of the different systems of practice pursued, were permitted, there is no knowing where the case would stop; it would never be terminated. The Court has seen that different professors and different schools of medicine differ upon questions of practice in this room, and who should decide between them? We are not competent to say whether Thomson's system is better than the old, or whether the old is better than Thomson's. This is a matter which the Court cannot

decide, and we are sure the jury cannot. And we would ask, what is quackery? We are sure that we are unable to decide what it is. Altogether, the question must come to the language of the indictment, which is specific, and to these specific charges the investigation must be limited. The testimony, therefore, proposed to be produced, is not relevant to the case.

Mr. Pope. There are privileges attached to the membership of the Friendly Botanic Society which I do not feel at liberty to state. Have understood that Burke holds one of these rights. It bears date, I think, 17th April, 1827. Have gone through a course of medicine myself on the Thomsonian system. First I took composition; then I took composition again. The third remedy is sometimes an injection. Lobelia comes next, cayenne pepper comes next; next in order we throw it up. Sometimes we take a good drink of anti-canker tea, next about half a pint of good porridge. The porridge won't come up. Then we take a little more composition, number 6, or cayenne, at discretion. Then take a little more porridge. I make mine of corn gruel, and use with it a little molasses. Then we throw up again, but the porridge won't come up. But we must go back; I forgot the steam. We take the steam before the emetic. This is my experience and practice, and generally after the injection. Injections always operate. We always steam before the emetic. We apply the steam before we empty the stomach. We take the emetic to cleanse

the stomach. What we call canker is a mucous substance, which comes from the stomach. We apply the steam from five to twenty-five minutes. Have applied it that long on myself, but never have taken it longer. Have taken it when I was slightly unwell. Have gone through a regular course when I have been slightly unwell. Have never had a very severe attack since I have been in possession of a right. The certificate is dated 27th March, 1830, and I have never had any severe sickness since I have taken these medicines. The first time I was very ill was in 1819. Had the yellow fever. The next severe attack I had was in going to the Western country, in the year 1825. Have never been very sick since. Have been very well since 1830. Have had no serious spell since, but have been frequently slightly sick, and have made use of these medicines. Whenever I have felt unwell, I have taken Thomson's medicines, and they have proved always beneficial. Have had better health since than I ever had before. Had for several years what they call the consumption, and it is to Thomson's medicines I attribute my present health.

Elijah Stansbury, Jr. Was with Mr. Pope on his visit to Bell's; we went there together. Mr. Pope called at my house, and we came up; and in going up Second street, heard some moaning. Pope remarked it must be a cholera patient. Do not know which proposed to go in. Pope appeared to be acquainted with the cholera groans. We walked upstairs, and found

a man on the steam cot, undergoing the Thomsonian treatment. He complained very much of spasms and cramps in his arms and legs. Bell only was present when we first went in. Burke was not present. Bell was rubbing his arms with number 6, for the purpose of allaying the spasms. Expressed my opinion that the current of air in the room would do more harm than the rubbing would do good. His arms were exposed as far as the elbows. The steam was introduced at his feet. Mr. Pope pulled out of his pocket a roll of brimstone, and put it into Hazelip's hand; he seemed too warm. Examined his feet and thought it was warmer than was necessary. Advised Bell to reduce the steam, and he did so by turning it off. We remained about fifteen minutes. He complained of pains in his arms and legs for five or six minutes, and then seemed relieved, and ceased complaining. After this Burke came in, and said he had been after medicine. He then gave a dose of composition, and in a few minutes he was considerably easier, and not in so much pain. Have seen cases of cholera during the epidemic in this city. Was called to, I think, eight cases. Thought them cases of cholera. Other persons thought so, and expressed their opinion that they were cases of cholera. Was unwilling to risk my own judgment; called on Mr. Myers and Mr. Williams, whom I had known frequently to have practiced in cases of cholera, and with great success. Would say unhesitatingly that the exhibition and symptoms of the case of

Hazelip, and those I have attended, had a striking similarity; they had all cramps, and were measurably the same. Generally took such persons as I undertook through a whole course, but not all. Never applied steam to the system generally, except by means of the application of hot bricks to the body and feet. Never had an opportunity of using the steam bath. When I have applied the steam, I have continued it until the spasms were removed. Have sometimes been obliged to continue it for four hours at a time. Give the composition first. Have had a right about three months; not before the epidemic. I commenced in consequence of the illness of my wife. Myself and Mr. Williams attended her. Cramps and spasms were what I judged the cholera by. Have found the tongue very cold. Hazelip's pulse was fuller and quicker than I generally found it.

Roger Brooke. Have used no other medicines in my family for two years than the Thomsonian medicines, and have also given them to some of my neighbors and friends who have urged me to do so. The plant lobelia, which has been so often spoken of, I have known from my boyhood under the name of eye-bright, a name given to it for its great virtues in curing inflammation of the eyes. It has proved very effectual in curing diseases of the eye, and I have known it to be applied after all the remedies recommended by the regular physicians have failed, and to succeed. Have known one application of the

green plant to prove effectual in cases of the most violent inflammation of the eyes. Believe that our standard writers who have treated of lobelia, have labored under a great mistake. Dr. Waterhouse and others who have treated of it seem to have confounded it with another plant. The *lobelia inflata* is not poisonous, as many have described it. Cattle will eat it at all times; but the *lobelia cardinalis* spoken of by Dr. Bigelow, I have never known cattle to browse upon. These two they have confounded together, when they are very different plants, and their effects are entirely different. Have never known a plant of the *lobelia cardinalis* to be browsed upon; this is the plant which Dr. Bigelow has described. Have taken lobelia myself several times, and have frequently administered it with success to others. In a case of hemorrhage of the lungs of one of my neighbors, who had been under a course for years of the usual remedies, and at last determined not again to apply for medical aid, I was solicited to administer, and I felt the responsibility of the case. Having read Dr. Waterhouse and the defense of Thomson, and having confidence in him, I was induced to try them, and checked it in less than three hours. The patient got up, eat heartier than I did, and used active exercise, and is now in good health. He was as white as the wall. He stated that he discharged more the last time than at any previous time. I thought that if I could equalize the circulation, I might succeed. Some medical gentleman

said it would stop itself. They then tried to persuade him there was, in a large one, less danger than in a small one. I did not use lobelia in this case; I used cayenne, No. 6, composition powder, ginger tea and steam. This stopped the hemorrhage. My object was to get the circulation equalized. It was about 9 o'clock that I was sent for; the blood continued to discharge for some time; it was checked before 12 o'clock. It returned, however, and continued to discharge, and appeared as if he was puking it up. It was blood from the lungs, I have no doubt. The blood was florid, or light colored.

I have never had reason to suppose any injury to result from the use of lobelia. Have taken antimonial wine, tartar emetic and ipecacuanha as an emetic, but I consider that lobelia is much the easiest medicine to effect that object. It relieves the stomach without any of the nauseating feeling which the others produce. The doses of lobelia are generally a teaspoonful at a dose of the powder, and to be repeated in ten or fifteen minutes. Have taken myself three doses; and repeated them in that time sometimes as high as seven teaspoonfuls. It sometimes operates on me the first or second teaspoonful. Believe it is of importance to have it fresh. Have used cayenne pepper in my own case, and always carry a bottle of it with me. Am subject to depression of spirits, and find it necessary to have it with me. If I take a little of it in the morning, it causes a glow over the whole system; I feel ex-

hilarated and enlivened for the whole day. Have a cold and dyspeptic stomach, and find it serviceable to take a little cayenne. In case of violent pains, a half teaspoonful will afford relief. One of my neighbors was taken violently with spasmodic cholera, and sent for me to administer relief. I sent my son with directions to give half a teaspoonful, to observe its effects, and if it was borne well, to repeat it. The person was in violent pain; the husband was so frightened that he could render no assistance, and the full teaspoonful was given in mistake. The consequence was, she was relieved, and soon well. Have found cayenne pepper the most permanent, powerful and purest stimulant known. Other stimulants shatter the nerves. When I had typhus fever, my physician gave me brandy. Brandy is not so good as cayenne in such cases. This I have learned, as well from my own experience as from the medical authorities. I have studied the nature, and consulted authors on the subject of cayenne. Rees' Cyclopaedia has an article on it. A gentleman lately read authorities to guard me against using it, and attempted to satisfy me that it had injurious effects. Dr. Wright also represents it as being very effective in some fevers which prevail when no other medicines can have the same effect. A work by Dr. Wright, of Barbadoes, treats of the good effects of cayenne in some particular diseases. Never had the smallest reason to suppose it has done any injury.

More than twenty persons

have reported to me the good effects they have experienced from the use of cayenne pepper, and many of them have declared that they would not use any other medicines except in extreme cases. I drop a little cayenne in a glass of water, and take it in that way for the dyspepsia, and think it very valuable for that, as well as other diseases. Dr. Bigelow has described *lobelia cardinalis* as with a bright red blossom, and growing along the margins of streams of water.

Hemlock is not poisonous. It is a tree nearly resembling pine or spruce, with leaves like the spruce, but it certainly is not poisonous, as my own experience has fully proved, as well as others whom I have known to have used it without any fear of its effect. I freely use it, and my family also use it.

Nerve powder has been recommended by several eminent persons as valuable in some diseases, and it is frequently used by persons who have habituated themselves to the use of opium and laudanum. To some that I have recommended it, they have said they were much obliged to me for suggesting it, as it had the effect to quiet their nerves without having the same stupefying effect that opium has. This I have found from what I have tried myself.

Composition powder I also use freely, without any apprehension of its consequences, and with the same good effect. I took some of it this morning. It has also an enlivening effect, and tends to warm the stomach, to use the expression which has

been so often hinted at here, it keeps the internal above the external heat.

Canker I understand to be synonymous with, and the same as what is called acrid humor, or, in other words, the principle which produces the decay and decomposition of plants. Dr. Mitchell terms it the principle of decay. Children have often what is termed the canker rash, which relieves them by its eruption.

Have never known the medicines which I have mentioned to prove injurious, but invariably the contrary. Have applied them in the greatest variety of diseases, such as violent cases of dysentery, accompanied with violent pains, so much so as to render the patient refractory. Have also used them with advantage in cases of bloody flux. Have had a patient that had been under treatment for more than a week, by two physicians who were near me. I gave him some of the composition and some No. 3; and, lastly, some of the lobelia. He had the scarlet fever, accompanied with an inflammation of the breast. By the use of these remedies he was relieved in an hour. Never administered the vapor bath without the patient expressing the greatest satisfaction. Although the patient, when about to commence the steam application, was suffering violent pain, they have always stated that while under its effects they were entirely free from pain. In the first stage of a cold, a little stimulating medicine and the application of the vapor bath prove of great use—the only danger is in

coming out of the bath, which requires great care. Am generally governed by the feelings of the patient, as to the length of time I continue the application of steam; as soon as complaint is made of its being oppressive, I would desist. While the operation of the steam is going on, I always have prepared some warm stimulating medicines to be administered at the same time, and I have always heard the patients express themselves as being entirely clear of pain while in the bath. Also consider the vapor bath as beneficial in cases of chronic pains, and have seen the good effects of it. I produce the vapor which I use for this purpose by putting hot stones in water, which is the same in principle as the steam bath. I have not the same conveniences for a steam bath as some others, and make use of this simple plan as a substitute, and find it answers the same good purpose. Always regulate the steam by the feelings of the patient. Some years ago I had an opportunity of seeing Dr. Jennings' vapor bath; but I consider its application as entirely different from Thomson's bath. It produces very much the same feelings as going into a stove room. It wants moisture, and without this I consider much of its good effect is lost. I never had one patient who underwent the operation of the vapor bath but what expressed pleasure in it. At first, the patient is a little uncomfortable, not being able to breathe freely, but after continuing a few moments, it produces a very pleasant, soothing sensation. I took Thomson's

directions, and continued the steam generally fifteen or twenty minutes, but always had reference to the feelings of the patients; sometimes they wished it continued longer and I have done so without experiencing any injurious effects. Used the vapor bath and the medicines at the same time. In burns, frostbites and chilblains, I have used them with much satisfaction. Have used the vapor with bricks, to patients who have been so ill as not to be able to set up, by heating them and pouring water over them, and then wrapping them up in blankets; and I have sometimes kept them under the influence of this steam all night, for the purpose of keeping up the perspiration, or to use one of Thomson's homely phrases, until we obtain a heat that will hold. Sometimes I have seen patients so low as not to be able to speak, come out relieved. Consider the system of Thomson as very much adapted to the cure of all forms of diseases. I have had a great deal of ill health, and have had the practice of ten or twelve physicians, and have often been bled without relief; and as far as I have tried it, consider it injurious.

Have actually tried these medicines in a variety of diseases, some of them contradictory in their nature, some inflammatory, some the reverse, and I have relieved them in the course of a few hours, and have always found these medicines to have their desired effects. Consider them as innocent, warm and comforting to the stomach. According to my opinion, the stomach is invigorated by the

application of Thomson's medicines. Consider the derangement of the stomach as the cause nearly of all disease. Consider that when you have applied warmth and energy to the stomach, the functions are more likely to be performed. Have found warm liquids always pernicious to weak stomachs, but the application of cayenne affords energy to the stomach, and thereby imparts energy and warmth to the whole system. Endeavor to apply Thomson's principles as far as I understand them, the object of which is to get up the vital heat of the system. And to give the bath before the emetic, as you by that means prepare the emetic to operate with more ease. Believe in the inward and outward heat spoken of by Thomson, and that if you deprive the stomach of its warmth you deprive it of so much of its power of action, and disturb the whole system. The outward heat is that which appears on the surface of the body; the inward heat is that which is contained in the stomach. So that we have two heats, inward and outward. The principle upon which Thomson acts, and which I believe to be a reasonable doctrine, and seems to agree with common sense, is to keep the internal above the external heat; that is, above the heat of the atmosphere—to keep the fountain above the stream. Did not adopt the system of Thomson without reflection and examination, and the more I have reflected upon and examined it, the better I am satisfied with it. Have learned in a very severe school. Have gained

much of my information upon these subjects from my own experience. Am now fifty-eight years old, and have had much sickness, and some very violent attacks. So that it was not merely from reading that I have adopted it, but also from the actual experiment of their beneficial effects. Rees in his *Cyclopedia*, which I consider good authority upon most subjects, gives the opinion of some celebrated medical writers, which serves to support and corroborate this system. Have read Dr. Waterhouse. He did not consider Thomson so illiterate that he could not properly explain his views, and illustrate so as to render them intelligible. The principles of Thomson's system is, that heat is life, and that cold is death. That there is a constant warfare kept up in the system between these two principles of heat and death. And that in all cases of death it is because cold has prevailed. This is the principle of this system, and going upon this impression, it is, that the medicines are applied.

Have suffered very much from rheumatism, and have tried many remedies; have used mustard seed, and almost everything that has ever been used for the rheumatism, until I became so bad that I could not ride on horseback at all. When I became acquainted with Thomson's medicines, I used them and always found relief in a few hours. The difference between mustard seed and cayenne pepper is this, that the mustard seed are volatile, and that the cayenne pepper is permanent. All volative remedies are injuri-

ous; they have a tendency to derange the nervous system. Cayenne instead of deranging it, strengthens and supports it. Brandy is volatile in its effects, but after the excitement which has been but temporary, has passed off, it leaves the subject more depressed than before. Have used brandy in disease, and it has injured me. If I take a dose of cayenne in the morning it is permanent; it lasts all day. It produces a liveliness of spirits, a warmth and glow over the whole system which continues through the day. Frequently take it in the morning to produce this effect, knowing that it is harmless in its nature.

The first time I took lobelia it was fifteen minutes before it acted. Physicians in my neighborhood think it too inert; my own experience, as well as all the information I have been able to collect relative to it, proves it to be the contrary. Lobelia I never used to act as a cathartic. Thomson says that in a practice of thirty years, he never knew it to act in that manner, and this agrees with my own experience. Never knew, much as I have used it, that when it was taken into the stomach that it has produced that effect. Never gave an injection of it, nor have I ever given an injection of cayenne. That is an operation I have never performed myself. Have given directions upon the subject, and referred the nurse to Thomson's book for further advice, and have known it to have been done, but never performed it myself. Cayenne pepper I consider one of the most perma-

nent stimulants that can be had. The steam bath will afford warmth to the system, when on the point of an ague, and has a tendency to restore the warmth to the surface; but I doubt very much its being highly stimulant. Look upon it as acting directly contrary, producing perspiration which causes for the time a debility and relaxation of the system; consequently it cannot be said to possess the stimulating properties which the cayenne possesses. The internal vigor of the system sends the blood to the surface. Think the vapor bath relaxes the system. It causes the volume of the pulse to be much enlarged. The volume but not its quickness. The blood flows from the heart, but as to explain its operation or the general action of the human system, I do not pretend to do it. My reading has not been very extensive. Have tried to be a practical man, and am better able to give facts than theories. Have an opinion upon all subjects which come before me; some of them may be taken up falsely, but I still have an opinion of my own. But if I were to attempt to express that opinion, I might only display my ignorance. Consider that the steam bath removes many obstructions in the system by directing the circulation to the surface. I don't think I am able to define all that acts upon the system as stimulants. Have always found by my own experience, and the knowledge I have found from other sources, has sustained me in the belief that the vapor bath has a relaxing tendency, and its effect is to drive the blood to the

surface of the body, and that it causes an increase in the volume of the pulse. In the administration of the steam bath, I have always been governed by circumstances and feelings. Consider lobelia to be rather stimulating. It has a tendency to loosen the phlegm; it imparts a warmth over the whole body; it produces nausea, and the effect of this is, that it is likely to cause the person to break out into a perspiration. The first case in which I used Thomson's medicines was a case of intermittent fever, which was relieved by their application. The second case was a swelled mouth, occasioned from a violent cold. In this they had also a happy effect. Have repeatedly used them since in rheumatism, scarlet fever, quinsy, inflammation of the breast from cold, dysentery, cholera morbus, cramp colic, and for aught I know, spasmodic cholera (we used to call it cramp colic), and all the premonitory symptoms, such as disorder of the bowels.

Would ask leave to state one matter in justice to myself. It has been stated that there was some sort of pledge of secrecy on the part of those who practice the Thomsonian system, or that they obtained by some means information which was not to be revealed to any one but who also practiced the system. I wish it to be distinctly understood that I know of no such information as has been alluded to, and I have felt it due to myself to make this statement, as I consider it a sort of imputation upon my character that I should be connected with any secret association. I know of none. I

look upon the matter alluded to by Thomson in his book where he refers to his agents for information not contained in it, merely to allude to the fact that he was so illiterate and unacquainted with the terms used in midwifery that if he undertook to give directions upon that subject it would be done in such language as would be unfit to be published; that therefore he thought it most advisable to refer to his agents for the information upon this subject. I considered that it referred to midwifery alone.

Mrs. Lydia Peters. Last spring three years Mr. Burke attended me. Had been long and severely indisposed for fifteen months. Dr. Thomas L. Murphy came to see me several times. Dr. Murphy said he could do nothing more than he had done. This he also told my mother. He brought another doctor with him. Do not know what he said to my mother, but they were discharged. Think his name was Smith. Do not know whether it was Professor Smith or not. He was a small man; do not know whether he wore spectacles. Burke was sent for after they were discharged. Had been confined to my bed part of the time, and part I was able to be about the house; but did not go out. Experienced no relief from the treatment of Dr. Murphy. I consider that I was entirely cured by Mr. Burke. Experienced great relief immediately upon the application of his remedies. My father and mother both attributed my cure to the skill and attention of Mr. Burke. In about six or seven weeks

from the time he first came I was entirely relieved, and have continued in good health ever since. Mr. Burke manifested during the whole time he attended me the greatest kindness in his treatment, was very attentive, and altogether his conduct was entirely satisfactory to myself and all my family.

Lambert S. Beck. Was attended by Mr. Burke about four years ago last June. Was severely afflicted with what I supposed was a bilious affection, and had been attended by physicians for nine or ten days, and took some medicine which they gave me; then called on Mr. Burke, who was then in Washington. This was on a Friday morning about sunrise. Was very sick, and had some difficulty in calling upon him. In about two hours Mr. Burke called and gave me some medicine, and I went through a course, and experienced great relief, and on Saturday I was entirely relieved. Remained in the house on Saturday; on Sunday went to church, and on Monday morning went to my regular business. Called upon Burke at his house, and he prescribed for me. Could scarcely get to his house, I was so unwell. Was about six hours under the course. Commenced on Friday about two hours of sun. Had read the book, and knowing that Burke was practicing in that city, and having heard him spoken of very highly, I applied to him. Burke had been practicing about two years, and I have known of his attending a great many persons, but never heard of any complaints either of his practice

or of his attention to his patients. Think I administered the medicine to my wife myself, when she was sick, soon after. I went through a course of that they call the Thomsonian system. Have the books. Burke assisted me, and I went through the balance myself as he directed me to do. Before I went into the bath I was in violent pains; and from the time I went into it, in about fifteen minutes I was as much relieved as I am at present. Took medicine while I was in the steam bath, in the same manner as is usual with the Thomsonian system. Took first a small quantity of potash; then used composition freely; then the bath, and went through the regular course. Took the lobelia, and immediately cascaded. Freely threw off bile, and at every operation felt better. Took medicine internally to keep the internal heat above the outward heat. The operation of the steam was continued for some considerable time, and after I had been, I think, about six hours under the effects of the medicine, I was relieved. Was worse on Friday, when I went to Mr. Burke, than I had been before. It was a bilious affection, and the fever was very high. Did not at that time take advice from a regular practicing physician. Had read Thomson's book, and heard that Burke was practicing, and this was the reason I sent for him. He was practicing in Washington, and had been for about two years. Burke called in about two hours after I called on him, and he assisted me in beginning the course, and then he left me with

direction how to proceed, but do not recollect whether he returned. Never heard any complaint of Mr. Burke. Knew he attended a great many patients, and have heard some of them speak very highly of his skill and attention.

Moses Schumaker. Was attacked about nine weeks ago with the cholera, and Mr. Burke attended me where I then boarded. He gave me a good steaming, and sweating tea to drink. He staid with me all the time. Was in a much better way soon after he commenced. He attended my wife next morning, and cured her. We both had the cholera. My sister-in-law took the cholera in a few days; he attended, and cured her also. Had very much cramps through my legs and arms, so much that I could hardly bend them. Had the diarrhoea the day before. Much cramps in my limbs, feet cold, no perspiration on the skin. Was afterwards two hours in a profuse perspiration, produced from hot bricks. Was lying alongside my wife, and we were treated alike. He was so attentive that he never left my bed until I was safe; the same with my wife and sister-in-law.

Mrs. Williams. Was laboring under a very severe chronic disease. Had been moving, and was much agitated by the fatigue attending it. Was seized with violent pains in the stomach, attended with cramps in the stomach, which seemed to adhere to the back. Immediately sent to my husband, and requested that Mr. Burke might be sent for, always having felt a preference for his practice from

what I had heard of him from those who he had attended. Burke mixed some medicines, which he came upstairs and gave me, which soon afforded me relief. The dose was repeated during the night. The medicine I took was composition tea, cayenne pepper and nerve powder. He mixed a teaspoonful and divided it into two doses. Applied steam to the feet, which was continued during the night, and repeated the doses of composition. The attack was very severe. Was much prostrated, and my breath cold. On the next morning I was much better, my stomach relieved of the pain, and my breathing also much better. My husband then carried me through a regular course, and I stood the steam as long as I could bear it. My husband gave the emetic, generally three doses, sometimes more than ten minutes between them; he would then give me as much nourishment as he thought proper. Before the application of the steam have frequently taken a large teaspoonful of cayenne; and while under its effects, another dose. Have given within fifteen minutes two teaspoonfuls of cayenne, and within twenty-four hours six or seven teaspoonfuls. Continue the treatment till the patient is entirely relieved, and I have never seen it fail. During the last six months I was afflicted with a severe chronic affection. I applied to Dr. Jameson, who pronounced it an internal schirrus, or cancer. He said that perhaps the application of washes might prove of service, but thought it doubtful, and considered it almost certain

that to effect a cure it would be necessary to use the knife. Told him I had some idea of trying Thomson's medicines, without letting him know who I was. He said he did not understand Thomson's medicines; that perhaps they might sometimes prove of service in particular diseases. Asked him why relief was generally the result of applying the steam. He said it produced relaxation, which was beneficial in some cases. My husband stated that he did not wish to control me in my choice; that he left it to my own judgment to decide what to do. Concluded that if the application of Thomson's medicines would not relieve me, I must die. Commenced going through the entire course. Have gone through forty-six courses in six months, have drank composition tea as I would tea made of any innocent herb. This tea I drink almost every night, and I take some nerve powder also. During the day I felt violent pains, and sometimes burnings for the whole day. My husband would make a mixture of No. 5, cayenne and nerve powder, and give it to me, and I have experienced great relief from it. Still continue to take medicines, and find I am gaining strength, although I am not entirely relieved, but my life is much more comfortable to myself. Mr. Burke was in practice with my husband for several months; and although he attended a great many persons afflicted with almost all diseases, yet we heard of no complaint from any one that he attended. His natural disposition is that of being very kind. My

husband has possessed a right to practice this system for about six years. Have often practiced it myself. Have given the medicines to children and ladies of the most delicate constitutions, with perfect safety; and recollect one case under my charge in which I gave seven teaspoonfuls of lobelia, and the steam on all the time. My own health has been worse than it is now, although it is not now good. Have left my room to come here, when I do not go out of my room to my meals. When we first bought the book I had a sciatica, or rheumatism, in my hip, and at that time I went through three courses before I was relieved; but my hip being weak, I applied strengthening plasters, as I was directed. Have gone through much suffering since that.

Have attended a great many ladies who were affected with the liver complaint, some of whom were severe cases, and have afforded them relief. Consider that for the steam bath, the steam box is preferable to the use of hot bricks. If the apparatus of a box cannot conveniently be had, why then the bricks can be used; and I have often known them to be applied with good effects. Have attended several ladies in one day, and take Thomson's book as my general guide and rule, and vary it to particular cases to my own judgment. Have never known, nor have I seen any danger whatever, to arise from the use of any of these medicines. Have known seven persons to go through a course in one day, and all to be relieved. Have known them to be applied to children

from one month old to ten or twelve years, likewise upon the most delicate ladies; some of them have been brought in carriages, being too ill to walk, and after having gone through a course, have left much stronger than when they came. We have relieved some of the patients in the course of one hour. Recollect one case of a lady who came, who stated that Dr. Baker had told her it was the only thing could be done for her. Have frequently taken an emetic. Have taken lobelia six times a day for six days in succession. Was once taken ill soon after a confinement. My nervous system was much diseased. My husband at this time was absent from home, and I was very ill. Had not slept an hour in twenty-four for a week. My child was also sick, and the attention which it was necessary I should pay it, occasioned my taking cold. Asked to be put into the steam box, and taken through a course. Stood in it and was seated in it altogether near twenty minutes. Afterwards had bricks heated red hot, and five of them quenched, applied all around me, and my side rubbed with No. 6. Then went through a steam for six days successively, and in a day or two afterwards I was about the house, and able to attend to my business. Continued wrapped up in blankets all that night, and during the next day and until night I was under the effects of a constant steam, and they gave me nourishment, and continued the medicines between, to keep up, as we term it, the internal heat; to keep the fountain above the stream. From my

own experience, believe the medicines will do no harm in any case. All the representations I have heard of Mr. Burke, go to say that he has always been very attentive and kind to his patients, and indeed I often think the Thomsonians make slaves of themselves. They attend at all hours of the night, and frequently sleep upon chairs or lay upon the floor, as Mr. Burke has often done, in order to be near if he should be wanted, and the better to wait and attend upon his patients. Do not think there are any people as attentive to the sick as the Thomsonians.

Mrs. Faithful. Know Mr. Burke, and have seen some of his practice, as he attended upon my family. He is very attentive to his patients, at least as far as I have known, and he generally succeeds in his cases. I have often heard in going through town that he had been uncommonly kind to the sick. He has been remarkably attentive in my family, and I do think they are more like slaves in their practice than others. Had a young woman who was taken with the cholera in my house; she had violent spasms and cramps all night; Mr. Burke attended her, and was very successful and very attentive and kind. Had a daughter who died, but she did not take the medicines. She was struck with death when she was first taken, and nothing could be done. In all the cases of Mr. Burke, as well as my own family, he was uncommonly kind.

E. Lyckett. About the 4th or 5th of September, was taken with the dysentery, and was attended by a regular physician who was thought to be as well

skilled as any gentleman in the city, practicing medicines. The first thing he did was to occasion a loss of blood, and I took about sixty grains of calomel. Was left so liable to take cold that I could not go out without occasioning a wheezing in my throat, which made it difficult for me to speak so as to be heard, or understood. Soon after this, a young man who came from England with me, an apprentice, was also taken. Was advised to try to obtain relief from a course of the Thomsonian system. Was much prejudiced against it, and refused to do it. His disease was the dysentery, or the diarrhoea, and soon turned to the bilious, and then to the yellow jaundice. He was as yellow, as we call it, as a guinea; and finding he was getting worse, I began to think of the course of treatment; however, determined that my young man should go through first, which he did; and found such great relief that I was induced to try it myself. Went through a course, and I felt entirely relieved, although I had not been well for ten or twelve days before; and I think it entirely relieved me. Submitted to go through a regular course, and I have been well ever since. He was with me constantly for four hours, and was very attentive the whole time. This gentleman's course began about 4 o'clock, and continued until 10 o'clock, when he left me, with bricks applied to my feet. Went through the course for the purpose of procuring relief from the difficulty I had of breathing, and I found it to cure it effectually.

Abner Pope. Do know of the practice of Francis Burke in

French alley, during the cholera. There were eight cases of cholera in that place, which he had charge of, and I was with him every day during the time. The first was Caroline Ruark's case, in the afternoon at 4 o'clock. It was a case of great violence, and admitted to be so by every one that saw her. She has recovered, and is well. She was under Burke's system, and I thought Burke was uncommonly attentive. He slept there on chairs. In one or two instances of the cases there, I carried coffee to them. The others were all thought to be cases of cholera. Burke recovered six out of eight cases which he had. Saw all that he cured. Generally the treatment was the same in all the cases, sometimes the quantity of medicine given was larger than in others. There was no steam applied except the application of hot bricks, except the case of Nash. He was put on a cot. Got an order from the mayor's office for blankets. Understood he was steamed on the cot until the next morning.

Mr. Williams. Have known Francis Burke for twenty years. It was through me that he purchased the right to use Thomson's book and medicines. Had heard frequently of his success as a practitioner. In the spring of 1829, having great confidence in his judgment, and my practice having increased very much, I requested him to come on from Washington and join me in practice. We formed a society of twenty persons, and wrote on to Thomson for rights. My practice requiring assistance, he came, and we associated together, and he practiced with me very successfully, and with great at-

tention. Heard he was practicing in Washington, was the reason for my sending on; he was successful and attentive, and was considered skilful in the use of the medicines.

Cross-examined. We generally steam until the patients become nauseated, or until we discover from their expression a fullness of the stomach. We then remove them from the steam, if in the steam box, if they are lying, we still go on with the steam. These are the general rules, and I should consider them as sufficient guides in all cases. We calculate that the circulation will be increased in certain cases. In violent fever, the pulse will be softened. I think our heating medicines equalize the circulation throughout the whole system. This is a rule in our system, and I never knew the rule to fail. The effect of it is to cause the system to expand, and to cause it to circulate the blood more freely. We never apply steam without the accompanying medicines. This is another general rule which we never depart from. While the patient is under the effects of the steam, we apply stimulating medicines. Lobelia is a stimulating medicine. Cayenne pepper also stimulates, and uniformly regulates the circulation.

Mrs. James. Have passed through two courses of the Thomsonian practice and derived a high degree of benefit from their effects. Could not attribute it to anything else, but believe that it was this system which was of such great service to me. It was applied under the direction of Mr. Williams.

Samuel F. Reynolds. Am well

acquainted with Francis Burke, and have some knowledge of the skill and capacity with which he treats his patients. Was with him when he attended the cases of cholera which occurred in French alley. Was with him there, both day and night, for some time, and always found him successful, very attentive and kind. Burke and myself attended eight cases in French alley, and cured six of them; some of which were very desperate cases, and the physicians said they could not be cured. Have been with him at other and various places, where he was attending patients afflicted with the cholera, and have always seen the same attention on his part under every circumstance. He left his business and started out at the time the cholera appeared in this city—and when he was much engaged in his business. Consider him a discreet, sensible man; a man of strong mind and discreet judgment—so much so, that when I am at a loss how to treat any patient I might have, I always apply to him for advice, what course to pursue. He is thought by those who have used Thomson's medicines, and are acquainted with him, to be a skilful practitioner, a strong-minded man of good sense. Judge of the quantity of steam which we apply to the patient by his symptoms while under the treatment. When he finds himself relieved or nauseated, it is then customary to draw the steam off. Have seen no instance where it has not produced nausea. We use our judgment to direct us how long to continue the steam; and, in making up this judgment, we have reference to the

symptoms of the patient. Have seen no instance where we have not given relief. Wherever I have seen Thomson's medicines administered, I have always found that they have had the effect which was intended. We inquire into the general feelings of the patient, in order to direct the length of time necessary to continue the use of the applications.

Miss H. Y. Williamson. Was indisposed in 1829, and remained so until 1830. Was attended by several regular physicians in the State of Pennsylvania. Their judgments were such that the second time they came they declared that nothing could be done to relieve me. My disease was an abscess of the lungs and an enlargement of the heart; and it was the opinion of the physicians that I could not possibly be cured. In August, 1831, my disease increased very much, the consequence of which was frequent bleeding from the lungs and great weakness. On the 16th of September, I arrived in Baltimore. Went to my uncle's, who lived on the Fall's road. Then took three courses of Thomsonian medicine, which was attended to by Mrs. Coates, and from this treatment I experienced great relief, and found that I was getting much better. Then came under the care of Mrs. Williams; and after having been under her charge for some time, I found such health as I had not enjoyed for four years, and remained in pretty good health until last fall, when I was again taken with the same complaint, and was attended by Mr. Williams, his wife, and Mr. Burke. Was again in pretty

good health, sufficient to attend to my ordinary business. On 25th September was again taken very ill with the same sort of abscess of the lungs, and also the bilious fever. Was so ill that my friends who were around thought me in a dying state, and wrote a letter to my father, informing my family of the situation in which I was, and their expectation of my death in a short time. In this situation, sent for Mr. Burke; he took me through a regular course, and it had such an effect upon me as I had never before witnessed; and I have been recovering to this time. Lay for two weeks so ill as not to be able to help myself, and all the time I found Mr. Burke very attentive and kind. He came frequently, and seemed to feel great interest in my improvement and encouraged me by the assurance that he thought I would yet recover. His attention and kindness to me was such that I said I would rather see him than any other person in the world. Thought I was at the point of death, and had not the most remote idea of recovering. Mr. Burke's attention was greater than I ever received from any physician, although I had been attended by several, and I got better from the commencement of his attendance. Know by the discharges that I had the abscess and bleeding from the lungs, and this was the opinion of my physicians in Pennsylvania. Had a violent fever about five days before I took the medicines. Took six teaspoonfuls of lobelia, as strong as it could be made, in the course of three or four hours. When I came to Baltimore I weighed

seventy-eight, and my recovery was so great that when I recovered I weighed one hundred and fifty-four. Now enjoy better health than I ever did before; my physicians in Pennsylvania said I had an abscess, and that I could not recover. So great is the change in me I do not think my friends in Pennsylvania will know me.

Edward Needles. It has not been long since I became acquainted with Francis Burke; only since the introduction of the cholera into this city. Consider him a man of intelligence, a smart man, an astute man, and a man of good judgment. My wife was under his treatment; she was relieved by him in a short time. Consider him very skilful in his practice.

Edward N. Sweeney. Became acquainted with Mr. Burke one day before the announcement of the cholera being in Baltimore was made in the public papers. Since I became acquainted with him, I had many opportunities of seeing him, and consider him a man of judgment. Consider him decidedly the best Thomsonian in this city of my acquaintance, except Mr. John M. Williams, and suppose he is better, as he had more practice. Consider him a skilful man and a man of good strong mind.

One morning during the prevalence of the cholera, heard a knocking at my door at 4 o'clock, and on opening the window, a man asked me if there was not a doctor lived there. Told him that he was mistaken; that there was one further down the street, and inquired what was the matter. (I have held a right under this system for some

time, but never have made a regular business of practicing it, and the more I have investigated it, the better I am satisfied of the mistaken treatment of the faculty.) The man said his wife and child had the cholera, and that they lived in Wagon alley, and that if I would consent to come and see if anything could be done he would give anything he was able. Told him I did not practice for money, but that as he was so anxious I should go, I would see if I could do anything. Went to his house and found five children—two of them sick, and the mother, Mrs. Oram, totally collapsed. She was speechless and unable to move. The man said that he was told Mrs. Oram was so far gone as to be beyond any hopes; but that he wished I would try to do something for the children. My feelings were much moved on the occasion, and I gave them a dose of medicine, and such is the tendency of our medicine that as soon as it was taken it had an effect. It was the medicine No. 1; the strongest preparation—and which, on account of its strength, has been jocularly termed Sampson. Told the man, after turning round and looking at Mrs. Oram, that if it were my case, I would not give it up. He begged me that if I thought any good could be done, to do it. Gave her some of the same medicine I had given the children, and I took a teaspoonful and a half of the strong lobelia and poured it down her throat. We had to force her mouth open to do it. As soon as she swallowed it she moved, and I found the medicines had taken effect. In a few minutes I told them I

thought it was probable she would recover, and I went for Mr. Burke and Mr. Reynolds. The child lived about six days. Left the cases with Mr. Burke, and he attended very particularly and attentively to them, being there nearly all day and night, and only slept upon chairs. The woman got better, and is now cured; I saw her yesterday. Also knew of another case of Mr. Burke's in which he was the one that administered, and that with success. This was the case of a woman at Bromley's tavern, near the Marsh market, who had violent convulsions. They had been out to find Burke; but he could not be found. There were not exactly the same symptoms in all the cases, but still I believe that all disease is produced from the same and one general cause. Mr. Burke gave her a vial full of the same medicines—about three ounces—and it did not relieve. We are by no means particular about the quantity of medicine, neither do we care anything about symptoms. My brother gave him another for her—a vial of lobelia, after I did, and this all of the strongest preparation. Consider Mr. Burke as a man of good judgment, and very attentive to his patients, and that he has sacrificed much time in attending during the cholera. Hope this court will, before it adjourns, give my friend a diploma.

Ephraim Larrabee. Consider Burke a man of judgment—a sensible man; and if I were sick and at the point of death, I would prefer him to any other man. Believe him a man of judgment, and a very smart man.

Dr. Cole. The symptoms of congestion of the lungs and brain might be discovered by any one acquainted with the subject. By convulsions, flushed countenance, redness of the eyes, insensibility of the pupil of the eye to light, eyes immovable, state of the lungs, great difficulty of breathing, these are all symptoms of congestion. The progress of congestion would have been discovered by the pulse to a certain extent. The pulse becomes slower in congestion, in consequence of the circulation becoming impeded, and requires a greater effort of the system to sustain the circulation. The treatment would produce a violent and strong circulation, then congestion. This can always be discovered by the symptoms. They had all manifested themselves before I got there.

Abner Pope. It was between 11 and 12 I was at Bell's, on the morning of Hazelip's death. Judge so from the circumstance of soon after going to dinner. Was there about a quarter of an hour, and I dine between 1 and 2 o'clock. Had been to Elijah Stansbury's, near the causeway, and was returning. Some time after breakfast I left home and went to Stansbury's. Stopped at E. Larrabee's on the route, probably half an hour. Went from there to Godfrey Myer's, and I think from there to Stansbury's. Don't recollect whether Myers was at home or not; stopped there but short time; and I think I went direct from there to Stansbury's. Don't know how long we were at Stansbury's; after I left there I came direct to Larrabee's to attend a committee meeting there. Was on the opposite side of the

street from Bell's, and the sound seeming to come from above induced me to look up.

Mr. Moffit. Did not see Mr. Pope there, nor Mr. Stansbury.

Mr. Williams. I stated that the criterion by which I should judge the proper time to remove the patient from the steam box would be when nausea was produced, or indication of fullness of the stomach. While the patient was confined upon the steam eot, I would not withdraw the steam entirely; this would make him liable to a chill and return of spasms. I would reduce the steam, but not remove it entirely. Hence the difficulty of breathing by a pressure on

the heart. Would not take the steam entirely off. Would have reduced it, which can be done as quick as we can turn the finger, by turning the cock part round. Have kept up the action of steam until the patient has complained, then I have reduced it, and continued it until the object was accomplished. Have known persons kept in a high state of perspiration by the use of steam. Have kept N. Hynson sitting and standing together, one hour and a quarter, and I have kept my wife continually under the influence of the steam from bricks, for two nights and one day.

THE SPEECHES TO THE JURY.

MR. GILL, FOR THE STATE.

The Counsel for the Defendant said that they considered, out of respect to the court and jury, who had already been a long time considering this case, they would not examine any other of the numerous witnesses that had been summoned in support of the prisoner, and considered that enough had been said before the jury by them to furnish a clear view of the whole case.

Mr. Gill, Deputy Attorney General. Gentlemen of the Jury: The duty to perform is one of a novel character. The Grand Jury has, in the discharge of the duties and responsibilities devolving upon them, presented the prisoner at the bar, on a charge of manslaughter. The charge is one, the prosecution of which, is attended with great difficulty and delicacy, because, in its consideration, it embraces subjects involving not only the character of many individuals, but dangerous consequences to the peace and well-being of society—consequences, frequently, entirely irreparable; to discountenance which, laws were enacted, and the administra-

tors of them who were authorized to watch for the general good, were bound to punish their infraction. In any other case, if the inquiry did not embrace subjects of so grave a character—was but one of the many occurrences in life, I would not feel authorized in so marked a manner, to call your attention to it. The case before the court, to the consideration of which I am earnestly endeavoring to confine the attention of the jury, is one of extraordinary interest. You will see, gentlemen, that the difficulty and importance I allude to, grows out of the circumstances of the case as presented to the court—it affects not the changeful variant interests of society, which may be diverted into other channels, and leave an opportunity to repair the evil incurred—no, gentlemen of the jury, those may be subjects ordinarily sufficiently grave to occupy your valuable time; but the case before you rises in the vastness of its magnitude far above all others that may be named, when you are told that it affects the human system; its operations, its health, its life.

It is not sufficient to believe that the individual is prompted to the deed by no malicious wish to work injury to his fellow. A desire of gain is too liable to lead men astray; and when we superadd to it the grosser motives which blind the judgment and influence the conduct of many, you will perceive the pressing necessity of guarding well every avenue to abuses in this particular. Error in judgment on his part is likely to involve the patient in difficulties and dangers, from which he may not be able to extricate himself from the false representations of heartless, designing persons. Experience proves that the most innocent medicines may be administered injuriously. Take an hundred persons, have them attended with such medicines—some would get well without any medical treatment—all they may need will be a little cessation from the intense application they pay to their ordinary business, and they will get well. A large majority of the balance will, under ordinary medical treatment, get well—there yet are a few whose cases require the utmost attention and care, and all the resources of the well informed

in the healing art; place such as these under the care of the unskilful, and they will certainly kill them; in the charge of the skilful they will as certainly recover. Question the conduct of the individual through whose agency this evil has been produced; call him to this bar to answer for his misdeeds, and immediately all that conceived themselves to be benefited by his medicines, come into court and willingly testify to the value of those medicines to which they attribute their relief. In case that individual is incompetent to judge correctly what remedy is indicated by a perfect knowledge of the characteristic symptoms of the disease, every attempt he may make to remove the evil may be fraught with the most pernicious and fatal consequences, which may be enhanced in its reprehensibleness—in the enormity of its character, by rashness and inattention to the plain dictates of humanity. You are, at least, to determine whether gross rashness, ignorance, and lack of that tender care for the condition and sufferings of the individual, the causes of whose death you are called to investigate, was not the procuring means which occasioned the death of the individual, to answer a charge of which the prisoner at the bar was presented by the Grand Jury, and brought before this honorable court.

Take a view of the circumstances connected with the case, and you will see a blind infatuation on the one part, and a manifest lack of judgment on the other. But before we proceed to a further investigation of the treatment, let us examine the means of instruction furnished, and the spring to action of the author and his followers. Observe his labored attempt to deceive the reader, and rouse up evil passions in the possessor of his book. Be not deceived by appearances—in the present case a party of individuals and the prisoner undertake to remove disease, and pretend to do so for the benefit of society at large. Before we admit the position, (and I would be as ready to allow all reasonable credence to the professions of others as any gentlemen in this court, if proofs did not justify the reverse) will it not be well to test the motives which seem to govern the individuals coming

before the court for the defense, the prisoner at the bar, and the author of this little book (Dr. Thomson's Guide to Health). We have a right to examine it, because by scanning its contents, we may be able to arrive at a knowledge of the motives and principles of its originator. I have carefully read it, that due justice might be rendered to its merits or demerits, as well as to the case more immediately presented to the consideration of the court, and must confess my surprise that there are to be found in this enlightened community, and among its members, those who vend, and those who circulate it. What does it contain? It tells a lamentable story of the evils occasioned by the use of medicine which have been received into common practice, and borne and triumphed over the test of ages, as useful and salutary. Here the author is evidently engaged, not in presenting to the cool judgment of the reader remedies which have been tested by men of close investigation and deep research, but in inflaming the bad passions by putting forth libels on the conduct and motives of a respectable and learned body of men. Not by their appearances but by the principles ought all their motives to be judged. The performance of the duty is a painful one, but justice imperiously demands the performance of it at this time from me. It is necessary to advert to the words of the fountain head of its slanders to learn whether a spirit of rivalry or an anxious desire to afford relief to suffering humanity, is the predominant principle. The practice of the regular physicians is injurious to mankind, the book says, on page 11. Is there anything to justify this? Does the conduct of that community deserve such a character? It is but an address to prejudice and not to the reasoning faculties of men—it promotes the exercise and indulgence of feelings, which should be carefully avoided. Again, "Much has been said and written upon fevers, by the professedly learned Doctors of Medicines"; this class of individuals pay no attention to the origin and application of proper remedies. All his effort is used to sustain the fever, and *he* says, p. 15, "The Herb

doctor uses all his skill to kill the fever"—"nature is heat"—"heat is life"—and thus he argues in a circle, arriving always at the starting point. Again he advances a new doctrine (pp. 18-19), "Nature never furnishes the body with more blood than is necessary for the maintenance of health," etc. Here he boldly charges even eminent physicians with practicing it for experiment sake even on themselves! The charge of experimenting is, evidently, only a design to mislead the reader. On page 27, he comes boldly and unmasked forward, and enters his caveat against certain medicines, which he abuses in no measured terms, still keeping in action a full share of the tenor of his slanders. I have before me a whole chapter headed "On giving poisons as medicine." The author says, "The practice of giving poison as medicine, which is so common among the medical faculty at the present day, is of the utmost importance to the public, and is a subject that I wish to bring home to the serious consideration of the whole body of the people of this country: and enforce, in the strongest manner, on their minds, the pernicious consequences that have happened, and are daily taking place, by reason of giving mercury, arsenic, nitre, opium, and other deadly poison, to cure disease. It is admitted by those who make use of these things, that the introducing them into the system is very dangerous, and that they often prove fatal." To cover the ground he assumes, and mislead the judgment, so by the occasional utterance of a truth he may have the semblance of a cause for his observations, and an excuse for ignorance and want of skill, he proceeds: "Those who make use of these things as medicine, seem to cloak the administering them under the specious pretense of great skill and art in preparing and using them; but this kind of covering will not blind the people. If they would examine it, and think for themselves, instead of believing that everything said or done by a learned man must be right: for poison, given to the sick by a person of the greatest skill, will have exactly the same effect as it would if given by a fool." Here we find the author purposely misstating the subject, and

evidently with the view to slander others, and thereby the better to cover his own selfish designs. Indeed, the whole book appears to me a work full of deception; and they that vend, and they that advocate and own it, participate in the criminality of its author, by endeavoring with their countenance and support to palm it upon the community as a truth, and the book as a work deserving of attention. "This covering" will not exempt themselves from a censure wherever the book is candidly examined. No medicine is as harmless in the hands of a fool as with a skillful practitioner who has made the subject the theme of his study by years of painful and laborious investigation. Nothing is harmless when taken in improper quantities into the stomach—even the most nourishing and innocent food we eat, may be partaken improperly and inordinately of, and do serious injury. The science of medicine is more complicated, and the evils of misapplication of proper remedies is attended with more pernicious consequences, than deviations from propriety, in the administration and reception of healthy food.

The subject of medicine, for the purpose of practicing to afford relief, should never be meddled with by any but men of extensive reading and close investigation. The author has a whole chapter headed, "The doctors without a system." Hear how he slanders a respectable and learned profession. "That the doctors have no system is a fact pretty generally acknowledged by themselves; or, at least, they have none that has been fixed upon as a general rule for their practice. Almost every great man among them has had a system of his own, which has been followed by his adherents, till some other one is brought forward more fashionable." With him, when a man has discovered anything superior in its kind, no advance is to be made—no improvement sought after—and no deviation from or change of views can take place in relation to any subject of investigation, without just ground for an implication of the correctness of the motive. The whole medical world are accused of being governed by fashion, and men of sound judgment and correct habits are

sweepingly maligned by this new light, and charged not only with want of principle, but also (page 34) with being weakly moved by fashion in the adoption of their views and practice. "Their practice is founded on visionary theories, which are so uncertain and contradictory that it is impossible to form any correct general rule, as a guide to be depended upon."

I cannot take the time to follow the author through all his malignities and mistatements, but I expect to be able to convince you, gentlemen of the jury, that the assertions I have made and may yet find occasion, in the prosecution of the case to make, are fully sustained by the developments of Thomson's book. I proceed (p. 132, on the subject of midwifery)—"I have given instruction to several who have bought the right, and their practice has been attended with complete success. Many men that I have given the information to, have since attended their own wives, and I have never known an instance of any bad consequences; and if young married men would adopt the same course, it would be much more proper and safe, than to trust their wives in the hands of young inexperienced doctors, who have little knowledge, except what they get from books, and their practice is to try experiments; their cruel and harsh treatment, in many instances, would induce the husband to throw them out of the window, if permitted to be present; but, this is not allowed for the very same reason." Herein is contained not only a repetition of slander against the learned faculty, viz.: want of judgment, and cruel and harsh treatment, but the author has, while he rails at the study of the science, the effrontery to teach others, what he is evidently ignorant of, and rail at such as have made themselves acquainted with the science, as a regular branch of their indispensable study—the purchasers of this book must know that they have been deceived, and cannot but be convinced that they are tampering with life, when they attempt to practice upon its system and medicines. I return to page 177—an article written on the subject of "Worms," Thomson says—"The common practice

of the doctors is to give calomel and other poisons to kill the worms; this must appear to any one who examines into the subject, to be very wrong as well as dangerous; for the worms cannot be killed by it, without poisoning the whole contents of the stomach. I once knew of a case of a child, who, after eating a breakfast of bread and milk, was taken sick; a doctor was sent for, who said it was caused by worms, and gave a dose of calomel to destroy them, which caused fits; the child vomited, and threw up its breakfast; a dog, that happened to be in the room, ate what the child threw up; he was soon taken sick and died; the child got well. The fortunate accident of the child's throwing off its stomach what it had taken, probably, saved its life; for, if there was enough poison to kill a dog, it must have killed the child." The general principles as set forth, and relation of facts advanced in this book, all go to speak one motive—one deliberate and continual determination to slander the physicians of the whole world.

We stand in society in various relations to each other, and there may be a few (of which number I think the author makes one) who are selfish and malignant, and do not study to advance the interests of humanity, who care little for the miseries of the rest, except only as it furthers their base motives; but, gentlemen of the jury, your own observation teaches you that the great mass are anxious to do what is right and proper. Judge the gentlemen of the medical faculty (and it is not reasonable to suppose that men bred and educated as they are, would lose by a comparison with the mass of men) by, but the same rule—is there any excuse for the indiscriminate attack made upon both them and the character of their profession? Can the motives which would actuate to such deeds be honest? If the mind of Dr. Thomson was not completely imbued with a spirit of rancor, he would have put forth a book of quite a different sort of character—after modestly advancing his views which conflict with generally received opinions, he would have rested the success of them upon the supposed plausibility and cer-

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taint of his premises and deductions, and calmly appealed, not to prejudice and passion, but to the sober collected judgment of the purchaser. Had he done so, a discriminating public would judge of it by its intrinsic merits, (if it has any) and the author be held in respect even by his opponents, who would not feel aggrieved if he enjoyed the meed of a well earned fame. But the appetite for slander must be satisfied, and the prejudices and bad passions of its readers be put in a ferment—and for no other purpose than to set men at variance with each other. The mind sickens at the debasing view—it is time to leave it.

I now come to the examination of the merits of the testimony. The case was presented for the consideration of the Grand Jury; they view it in its relations to, and bearings upon the well being of society, and aware that, if such practices were suffered to go unpunished, it would become an evil of great magnitude, and perhaps be attended by a widespread desolation of life, and were determined to do all in their power to arrest its progress. They have found a bill charging the prisoner at the bar, in the words of the indictment, with killing Benjamin M. Hazelp. You have heard the testimony on the part of the state. I leave it with you for the present. Among the witnesses for the defense we find the testimony of Mrs. Williams, she had a disease, and, notwithstanding all the boasted information which Dr. Thomson imparts, and all the knowledge acquired by practice, the character of her case is not understood, and Dr. Jameson has to be consulted, and his opinion obtained to show her to be beyond a cure by the use of the ordinary medical treatment. She tells you that she has very largely used Thomson's medicines, and that she thinks she would have died were it not for their surprising virtues—but notwithstanding the glowing terms in which she speaks of them, her countenance evidences that she is not cured of her malady. Miss Williamson appears on the stand, and with all the warmth of a grateful recollection of supposed benefits, tells you of her complication of woes, and that the prisoner at the bar snatched her from the

jaws of death. She considers her cure a miraculous display of the skill of the prisoner at the bar, and the virtues of his medicines—and, truly, if all the testimony for the prisoner be true, the age of miracles has not ceased yet. Mr. Sweeney also bears the like testimony to the character of the prisoner—goes into a description of the quantity of the medicines given in certain cases, and tells you in addition that he considers one single medicine good under all circumstances and varieties of diseases. Mr. Sweeney owns a right to use Thomson's book and remedies. I speak of this to show the false principles under which men may act, and how far they will go in support of the position they have taken. Sweeney was called to attend the case mentioned by him in Wagon alley, and he gave up the case to the prisoner—of course it must have been a very desperate case. He tells you that he has known lobelia to be used to good advantage in large quantities; and that a patient of the prisoner, Mary Jewett, took two phials full of the strongest preparation which he significantly calls Sampson, before relief was obtained; and from the reckless manner in which it was administered in large quantities, I confess, I am strengthened in the opinion that their proceedings are prompted and regulated by false principles of humanity. This Dr. Thomson tells his followers that he has made discoveries in medicine which puts to flight the necessity of all further inquiry upon the subject—looked over all the difficulties and impediments which might occur in future practice, obviated or overcame the whole, and now he offers them his book, the contents of which have forever banished the necessity of further investigation—all further examination—all further action in this address to self-love and pride. Yes, gentlemen, this Dr. Thomson dares to assume the attributes of Divinity, and tells the world that he has found the grand *desideratum*—the elixir of life—in “a general medicine,” “which is universally applicable in all cases of disease.” I hope the court will not think me too tedious, if I read the following extracts in exposition of the principles of this grand and desirable

“universal” secret “remedy,” which, even in his relation of the manner of its discovery, bears constant marks of the egotism of the discoverer. In the introduction he says:

“It is true that much of what is at this day called medicine is deadly poison; and were people to know what is offered them of this kind, they would absolutely refuse to receive it as a medicine. This I have long seen and known to be true; and have labored hard for many years to convince them of the evils that attend such a mode of procedure with the sick; and have turned my attention to those medicines that grow in our own country, which nature has prepared for the benefit of mankind. Long has a general medicine been sought for, and I am confident I have found such as are universally applicable in all cases of disease, and which may be used with safety and success, in the hands of the people. After thirty years study, and repeated successful trials of the medicinal vegetables of our own country, in all the diseases incident to our climate, I can, with well-grounded assurance, recommend my system of practice and medicines to the public, as salutary and efficacious.”

Great discoveries and improvements, he says, have been made in various arts and sciences since the first settlement of our country, while its medicines have been very much neglected. As these medicines, suited to every disease, grow spontaneously upon our own soil. I would remark here that in this place Thomson has forgotten one material ingredient in his medicines—the most powerful and permanent stimulant he used, cayenne pepper, certainly did not “grow spontaneously upon our own soil”—it was an article of foreign growth. He proceeds:

“As they are better adapted to the constitution; as the price of imported drugs is very high, it follows, whether we consult health, which is of primary importance, or expense, a decided preference should be given to the former; as an object of such magnitude as no longer to be neglected. Possessing a body, like other men, I was led to inquire into the nature of the component parts of what man is formed; I found him composed of the four elements—earth, water, air, and fire. The earth and water I found were the solids; the air and fire the fluids. The two first I found to be the component parts; the two last kept him in motion. Heat, I found, was life; and cold, death. Each one that examines into it will find that all constitutions are alike. I shall now describe the fuel which continues the fire, or life of man. This is contained in two things—food and medicines, which are in harmony with each other; often grow in the same field, to be used by the same people. People who are capable of raising their food, and pre-

paring the same, may as easily learn to collect and prepare all their medicines, and administer the same when it is needed. Our life depends on heat; food is the fuel that kindles and continues that heat. The digestive powers being correct, causes the food to consume; this continues the warmth of the body, by continually supporting the fire. The stomach is the depot from which the whole body is supported. The heat is maintained in the stomach by consuming the food; and all the body and limbs receive their proportion of nourishment and heat from that source; as the whole room is warmed by the fuel which is consumed in the fireplace. The greater the quantity of wood consumed in the fireplace, the more heat and support through the whole man. By constantly receiving food into the stomach, which is sometimes not suitable for the best nourishment, the stomach becomes foul, so that the food is not well digested."

I suppose in that case, all that is necessary is to give large quantities of cayenne pepper, and burn it out as we do a stove pipe: Yes, I see it is by the paragraph below! "This causes the body to lose its heat, then the appetite fails; the bones ache; and the man is sick in every part of the whole frame." After these very sublime and philosophical reasonings he turns to his evidences on the subject. On page 9: "I have found, by experience, that the learned doctors are wrong in considering fever an enemy. This I found by their practice in my family, until they had five times given them over to die. Exercising my own judgment, I followed after them, and relieved my family every time. After finding a general principle respecting fevers, and reducing that to practice, I found it sure in all disease, when there was any nature left to build on; and in three years constant practice, I never lost one patient." Here is a grand discovery, which if the statement of the relator is to be trusted, will keep men alive to an interminable age—men need not die now—the secret of prolonging life is at length discovered; and the whole is simply this—when the stomach is out of order, to give largely of cayenne pepper—burn out the flues, and you can apportion life to any given quantity. He says, (page 10) "It has been acknowledged, even by those who are unfriendly to me and my practice, that my medicine may be good in some particular cases, but not in all. But this is

an error. For, there are but two great principles in the constitution of things, the principle of life, and the principle of death." He says, in the same paragraph—"Names are arbitrary things—the knowledge of a name is but the *cummin* and *annis*, but in the knowledge of the origin of a malady, and its antidote, lies the weightier matters of this science. This knowledge makes the genuine physician; all without it is real quackery." Thomson has defined the cause of disease, and the effect of disease the same—the remedy being heat, it does not need much reflection to know what, under the practice of his system, to apply as a remedy—give heat; give cayenne, and the disorder must vanish. Surely no man needs long to remain in darkness, and commit the sin of "quackery." Hear him again—what parade he makes of superior intellect—with what complacency he sounds the praise of his wonderful endowments! What little dependence is to be put upon human learning! how useless and injurious! Page 11. "A man may have a scientific knowledge of the human frame—he may know the names in every language, of every medicine, mineral and vegetable, as well as every disease, and yet be a miserable physician." These are truths which are evident to all, as they come within the experience of all; but, surely, this can bear no analogy to the qualifications of such a man as Thomson. The possibility may exist, that some men of very extensive information may not, owing to some unusual peculiarity in them, be good physicians. The case widely differs when the individuals or individual are not in possession of a cultivated mind to qualify them for the practice. The first presupposes an occasional incompetency from, perhaps, a certain habit or peculiarity—the supposed case of an individual without the necessary education, involves in its stating only the idea of utter disqualification and improbability—it cannot with any semblance of correctness be tortured to mean that an ignorant man like Thomson may be capable of performing the high duties of a physician. With all the supposed incapacities of a man of science in the knowledge of diseases and their

remedies, it is preposterous to conclude, with even all his disqualifications, that he is no better as a physician than the most illiterate. It is gross folly enough, to feed the mind on flattery in any individual, but when it is furnished and swallowed by the individual himself, it is truly disgusting and abhorrent.

This Dr. Thomson, who, it seems cares not what false principles he puts forth so that he may vend his book—hear how adroitly he applies to himself, expressions, which the author of them would never have uttered, had he supposed the possibility of the abuse made of them in this book—“But, there have been men, without this, to boast of, from the earliest ages of the world, who have arisen, blest with the sublimer powers of genius, who have, as it were, with one look, pierced creation, and, with one comprehensive view, grasped the whole circle of science, and left learning, itself, toiling after them in vain.” It cannot be misunderstood—he intends this should be applied to himself. Yes! he has studied thirty years to accomplish this task, and all the information he can give is a farrago of nonsense contained in this little book. Here, in his own distempered fancy he has embodied a fund of valuable information—a something which did not admit of change, to which all the world might look and be healed. If the concluding sentence is not sheer nonsense in reference to Thomson, then, I must confess, I have ever been laboring under the greatest disabilities to the proper information of a sound judgment—delusion and error. It is the conclusion he draws from the premises he has stated above, in his own favor. “A man never can be great without intellect; and he never can more than fill the measure of his capacity. There is a power beyond the reach of art, and there are gifts that study and learning can never rival.” Yes, gentlemen of the jury, this ignorant, great Dr. Thomson has obtained a knowledge which puts down all science, and leaves learning toiling after it in vain. Yes, a knowledge of this book will qualify a man to cure the whole catalogue of the sufferings of humanity—“there is a power beyond the reach of

art," and he has it by intuition—"and, these are gifts that study and learning can never rival," and, this man, according to his own notion, has attained them! and to perpetuate the idea, he has adorned his book with a portrait of himself, having this motto—"His system and practice originating with himself." He endeavors, by direct flattery, to get within their judgment, and tells them that his long experience and great success prove that his medicines may be used with safety and success by any person—that all constitutions are the same, and all diseases are alike, however opposite their nature. I have heard of mathematics being taught by a game of marbles, but to prove that the science of medicine, or a knowledge of the curative art, could be acquired without effort would be a problem more difficult to solve than mathematicians or any others have yet undertaken. Nothing can be learned without labor and attention—and nothing is more difficult to acquire a correct and useful knowledge of, than the science of medicine. Notwithstanding all the facilities afforded by books, many are totally ignorant of certain arts and sciences—they are not easily acquired by any person—and, perhaps it may be necessary to the well being of society, that it is so. Thomson and his followers have brought all diseases to one general standard, and they know of but one general remedy—all else "is but the *cummin* and *annis*" but in their "one general remedy," "lies the weightier matters of this science." Men cannot be too careful when they tamper with what they never can restore. Scarce has Thomson began to repose under the shade of his laurels and to reap the benefit of the sale of his rights, when his quiet is disturbed by the innovating hand of another aspirant after fame. In the first page of his address to the public, he complains; "many persons are practicing my system, who are in the habit of pretending that they have made great improvements, etc.," and says, "the public are, therefore, cautioned against such conduct," etc. Elias Smith says, he has made improvements on Thomson's practice, and Thomson bawls out against the innovation, and cautions the public

against the evils attending "such conduct." Thomson, in his own estimation, had now become a regular physician.

From the expositions which have been made respecting the correctness of the system and practice revealed in this book, you, gentlemen of the jury, will be able to determine how far men are to be benefited by the use of it. The prisoner is to be responsible to the laws, if he is proved to be guilty of gross rashness and ignorance, and the book binds him hand and foot to the principles of it—if he varies in the least, he is deprived of his right, and denounced by its author as an innovator, and no longer worthy, nor entitled to the privileges and immunities of membership. The cardinal principles are set forth on page 89, sections 3, 4, 5.

"That the construction and organization of the human frame are, in all men, essentially the same; being formed of the four elements; earth and water constitute the solids of the body, which are made active by fire and air. Heat, in a peculiar manner, gives life and motion to the whole; and, when entirely overpowered, from whatever cause, by the other elements, death ensues.

"A perfect state of health arises from a due balance of temperature of the elements; and, when it is, by any means, destroyed, the body is, more or less, disordered. When this is the case, there is always a diminution of heat, or an increase of the power of cold, which is its opposite.

"All disorders are caused by obstructed perspiration, which may be produced by a great variety of means; that medicine, therefore, must be administered, that is best calculated to remove obstructions and promote perspiration."

"Earth, water, air and fire," compounded, form the man, and the whole treatment to be pursued in the removal of the various diseases to which he is exposed, are contained in two things—heat and medicines, without reference to symptoms of contra-indications. No complaint should be made of his consumption of food—the more he eats, the warmer he is—and, the warmer he is, the better health he enjoys. Now, gentlemen, of the jury it is known that many diseases create an inordinate appetite—here the great fundamental principle is observed to eat largely, for the purpose of keeping up the inward heat above the outward. Does not such a plan

overload the stomach, paralyze its digestive powers, and lessen its warmth in proportion to the shock given to them? How is it to be accounted for on Thomson's principles? The terms food and medicine are sometimes used synonymously, and he says—"If it is agreeable in one case, it is agreeable in all." What do they mean by heat upon the surface? I do not comprehend what dependence the outward heat or atmospheric heat has upon the inward heat. The stomach is called the focus of the inward heat—it is generated in the stomach. The supposition is that the outward heat will be exceeded by the heat of the stomach, as it is constantly originating there, and evolving from it—yet they contend that the outward heat may be greater than that from the stomach. The Thomsonians contend that heat is life; and, of course, there is no life, by their rule, without heat. What are we to do with the cold blooded animals—have they not life? The book says, "Life, blood, heat and nature, are synonymous terms." Here we have an outward and inward heat, and an outward and inward life; an outward and inward nature—and, for aught I know, an outward and inward blood, too, for they are all synonymous! Surely Thomson did not understand himself when he was putting forth these follies. He is more powerful in using the weapon of slander than in anything else. I can read an extract from a work on Animal Heat, showing that the natural temperature of the blood of man was the same in all climates. Other authors say that the origin of heat is in the lungs and blood—it appears more reasonable that it should be there than in the stomach. Is there any other motive for respiration than to produce vital heat? For this, only, it appears essential to human life.

The origin of Thomson heat is in the stomach, which is constantly exposed to diminution by the action of the atmospheric air and a variety of other agents. Thomson said, he had long sought for a universal remedy, but, if his system is based upon such untenable principles, it is dangerous to carry it into practice.

I now come to the consideration of the evidence of the witnesses who have given in their testimony before the court—but, first let us make inquiry into the condition of the man who died. Patrick and Moffit both say that they saw him on the morning of the day on which he died. They say that they did not know that anything was the matter with him. Larrabee says he complained of pains and oppression in the stomach and bowels, and appeared very much alarmed; but Townsend says, he saw him at about a quarter past ten near his own house, and that he did not appear ill. Sumwalt tells you that he did not know that Hazelip had spasms, but that Bell told him that Hazelip had. Pope and Stansbury say that he had spasms. The testimony of the witnesses conflict much with each other; you are the best judges of who, what and how much of these statements is to be believed, when the whole is taken in conjunction with the testimony of Dr. Hintze, that he was called upon late on the night previous by Hazelip, and that nothing but alarm ailed him at that time; and, in conjunction also with the testimonies of all the physicians that were present at the post mortem examination, that the body of the deceased had no internal marks of recent disease. Next, Hazelip was seen on the steam-cot by Patrick, Moffitt, West and McCauley—they all testify that Burke and Bell gave, or had given Hazelip medicines, and at the same time he was lying on the cot and under the influence of the steam—that Hazelip asked to be let off, but that they prevailed on him to stay on the steam-cot; and again, that he sat up on the cot, and that they persuaded him to lie down—that Hazelip appeared very restless, was in a profuse perspiration, and that Burke and Bell gave him composition powder, lobelia, cayenne pepper, and number six; and that they said they did not wait for the medicine to operate. Townsend says he saw Hazelip near his house at a quarter of ten. Patrick says he saw him on the steam-cot at between eleven and twelve of that day. We may, therefore, fix the time of the commencement of the steaming at half past eleven; and, by the concurrent testimony of all the witnesses for the pros-

ecution, he was free up to that time from all appearance of disease; and all say, that while on the steam-cot he had no appearance of disease. Moffitt says when he went to see Hazelip the second time, it was between two and three o'clock, and he found him on the bed, beside the steam-cot, in a state of insensibility. And West says he saw him on the steam-cot at fifteen to twenty minutes past one, and then no bed had arrived, or was in the room. All who speak positively on the subject during the operation of the medicines and steam, say that there was no preparation of the sort in the room. Suppose we fix the time of his being relieved from the operation of the steam to two o'clock, Hazelip then must have been at least two hours and a half under the operation of the steam.

Lobelia is an article so dangerous in its qualities and vehement in its nature, that it is not safe to be administered indifferently in disease, and only in a few cases; but in any form it is to be admitted cautiously, and with a well informed and well ripened judgment; but in this instance it appears to have been administered in excessively large doses, and without attention to symptoms and indications; conjoin with this the constant action of the steam for two hours and a half, at such a high temperature as to be complained of by Hazelip; that the steam excites the vessels on the surface to increased action, and brings the whole circulatory system in rapid and violent action; and when carried to too great an extent, ceases to excite, by overwhelming the heart and arteries. Does this show that maltreatment caused Hazelip's death? You have been told, too, gentlemen of the jury, that the action of all the medicines, etc., administered, are vehement in their action, and violent and dangerous in their operation and effects. Lobelia is represented as an acrid and poisonous article—it may or may not be so. The witnesses for the defense say it is not. Pope says it casts up what is offensive, but his porridge is not thrown up by it. I do not believe him. There are a great variety of remedies which may be used with indifference, but it did not appear that the lobelia was an article of that description.

Gentlemen of the jury, Dr. Barton, from all the information and experience he possessed, says: "If lobelia does not puke or evacuate speedily, it frequently destroys the patient in five or six hours." With permission, I will read to the jury cases tried in the courts on the subject, from which you may be able, in view of the testimony in this present case, to make up your decision; and first, I would beg leave to read the trial of the author of the system and discoverer of the medicines upon and with which the prisoner at the bar practices. It is the case of Samuel Thomson.¹⁰ The recklessness of Thomson and his ignorance are here shown, in undeniable evidence; but the Judge instructed the jury, on submitting the case to them, that as the prisoner was there on an indictment for murder, for wilfully and maliciously killing Ezra Lovett, his patient, unless it could be proved that the act was wilfully and maliciously done, an action on the case could not lie; and they were bound, however satisfied that the patient, Ezra Lovett, came to his death from the improper administration of Thomson's medicines, to decide in his favor; and upon that ground, the jury found a bill of "Not guilty." But this is not the case with the present suit—neither do the judges enjoy and exercise powers to the same extent as they do in Massachusetts; the jury in the present case may find their verdict as they may determine from the nature and weight of the testimony. All the cases go to show, that where there is not due caution observed in the administration and qualities of the medicines, the prisoner should be guilty of the crimes alleged against him. Was not Hazelip under the application of the steam for two and a half hours? Was not the whole treatment carried to excess? If the prisoner at the bar is not convicted upon the evidence before the court, an immunity from responsibility will be the consequence; and thereafter, any man that chooses to get Thomson's patent, may go forth and kill or cure, without fear of punishment.

¹⁰ 6 Mass. 134.

MR. RICHARDSON, FOR THE DEFENSE.

Mr. Richardson said that in several passages read by *Mr. Gill* he had stopped short of giving *Dr. Thomson's* ideas, and thereby presented them in a wrong form, and such was the case with nearly all his quotations—and in one only, there was a semblance of truth in the charge of slander of the medical faculty by *Dr. Thomson*, and that had some justification in their persecutions of him. He next went into investigation of the nature of the disease, and showed by the testimony of *Pope*, *Stansbury* and *Sage*, to the fact of *Hazelip* having spasms—the admission of *Sumwalt*, that it had been stated that *Hazelip* had had spasms, without being denied by the patient—that *Pope* and *Stansbury*, from their knowledge of the disease, considered it as a case of cholera; and *Dr. Geddings'* admission, that with some slight difference, that the appearances after death were such as is usual in that disease. To prove that the appearances about the brain were also concomitant, he read from *Good's Study of Medicine*: “Several instances were heard of at Hoobly, and other places, of natives being struck with the disease whilst talking in the open air: and who, having fallen down, retched a little, complained of vertigo, deafness and blindness, and expired in a few minutes.” *Mr. Gordon* gives a history of many cases of this kind. “At Bellary, a tailor was attacked with what was supposed to be cholera, and instantly expired, with his work in his hands, and in the very attitude in which he was sitting.” And (pp. 182-83)—“I have said that the living power during the whole of this melancholy event, seems to have been very feebly recruited from its fountain, or not recruited at all. The latter appears to have been the case in the island of Ceylon, where the disease raged with even more violence than on the Indian continent; and the patient very frequently expired in twelve or fifteen hours from its attack. A dissection of those who perished thus early in this quarter, has put us in possession of some interesting facts, varying in a few particulars from those that

occurred on post-obit examinations in the island of Bombay; and which will, I trust, uphold me in making this remark. The brain was, in these cases, chiefly the congested organ, the liver sometimes appearing to have no congestion whatever; and hence the inactivity produced in the brain, by the nauseating state of the stomach, must have been greatly augmented by oppression."

Mr. Richardson reviewed the medicines—their nature, their usefulness and harmlessness, as proved by all the witnesses for the prisoner. The testimony of *Mrs. Williams*, a female in delicate health, who had taken forty-six courses of *Thomson's* medicines, and with benefit, within the past six months, and her very full testimony in reference to her treatment and success with other females who had used them. The case of *Mr. Lycett* and his young man; *Mr. Shumaker*, his wife and sister; *Mr. Needles*; *Mrs. Lydia Peters* of a disease pronounced incurable, etc., and *Miss H. Y. Williamson*, who attributed her recovery from the very verge of death to the skill of the prisoner. The testimony of every individual knowing the character of the prisoner, was that he was competent and attentive, and this was the character of the prisoner for at least the last four years without one exception, by the united testimony of the witnesses in the city of Baltimore; to which was superadded the testimony of *Lambert S. Beck*, to the practice of the prisoner in the city of Washington previously; and, nothing on the part of the testimony for the state went to show that the prisoner was lacking in attention in the case before the Court. In fine, the prisoner had been proved by abundant testimony to be competent, successful, attentive, tender, and to possess all the qualifications necessary to recommend him to public confidence; and if even in a few cases he was unsuccessful, it could not be laid to his charge as a fault, but to the impotency and fallibility attendant upon the exercise of the best judgment in such cases. If such were not the correct view, then, a physician of the most pre-eminent talents might, from malice, or a spirit of rivalry, be brought to the bar, and, to say the least

of it, be subject to much vexation and loss of time, if not to punishment and loss of character—when the utmost exertions in his power had been made to insure success.

In a great English case,¹¹ the prisoner was indicted for the murder of Ann Delacroix, at the parish of St. James, Westminster; he was also charged with manslaughter by the Coroner's inquisition. Lord Chief Justice Ellenborough (in summing up), said: "There has not been a particle of evidence which goes to convict the prisoner of the crime of murder; but it is still for you to consider, whether the evidence goes so far as to make out a case of manslaughter. To substantiate that charge, the prisoner (a surgeon) must have been guilty of criminal misconduct, arising either from the grossest ignorance, or the most criminal inattention. One or other of these is necessary to make him guilty of that criminal negligence and misconduct, which is essential to make out a case of manslaughter. It does not appear that in this case, there was any want of attention on his part."

MR. STEWART, FOR THE DEFENSE.

Mr. Stewart. A few years since I was engaged in a suit in which was seen arrayed not a few physicians of ordinary intellect, and reputation for acuteness, opposed to each other, but a marshalling of learned professor against learned professor of different colleges, but of the same school in deadly conflict, bringing with them all the talent, research, and erudition of which they were capable, and each supported in his position by witnesses of acknowledged merit in the practice of medicine, but with views of treatment, although in some points alike, essentially different from each other. The consequence was, an elaborate investigation was entered into, to prove (what a Court and jury will never be competent to decide upon) whether of the views and treatment which are almost as various as there are physicians, the accusers or the accused are right. A Court can only decide where there is

¹¹ R. v. Williamson, 14 S. & L. 493 (1807).

manifest inattention to the plain duties of propriety in the administration of medicines undeniably pernicious, and where there is palpably a recklessness and want of attention, and gross ignorance. For where modes of treatment and preference of means only, are the subjects of contention there are such a variety of contradictory views in the medical world, that they themselves, are at constant issue with each other, and to leave the decision of correctness between their discrepancies to the judgment of such as had not been able properly to examine the whole ground of the controversy, would be truly putting dangerous prerogatives in the hands of the ignorant and unskilful, in such matters; for, gentlemen of the jury, "who shall decide, when doctors disagree,"

The case before you is not of the character I have just alluded to—here is not an embattling of Thomsonian with Thomsonian—not with them is to be found theory after theory, and system after system chasing each other in interminable succession until they vie in number with the stars in the firmament—no, gentlemen, they have one system and one mode of practice, which, notwithstanding the variations necessary to meet the attacks of the various forms of disease, are simple in their form, innocent and salutary in their effects, and adopted, received and administered, without a single reservation by thousands, and perhaps tens of thousands of our fellow citizens throughout our widely extended country, of all ranks, conditions and grades of talent, as such, without dissent or controversy; this is not a too highly colored assertion—go where you will—east, west, north, south, you will find the disciples of Dr. Thomson scattered abroad—a large and multiplying class of useful individuals—question them respecting the system and medicines of Samuel Thomson, and they are, with an undivided voice, pronounced innocent and powerful in the banishment of disease and death. Truth has been truly said, in the emphatic language of a nervous writer, to have "but one side," and the universality of their reception by those best acquainted with the system and practice of Dr. Thomson, seem to go far to prove them true. I am not

here for the defense of any system, but to defend my client against the charge of manslaughter as preferred against him in the words of the indictment—the system of Dr. Thomson, the book, with all his assertions contained in it, is before the public—edition after edition has been printed, the medical faculty have access to it, as is instanced by the book in court, owned by Dr. Cole; and they have not been able or undertaken to controvert what is there published. Until that takes place they cannot complain of an injustice too slight for comment. Reference has been had to the trial of Samuel Thomson in Massachusetts. That case was got up by a Dr. French for the purpose of putting down by persecution, what he had failed to do by his practice. The same gentleman, not long afterwards, became a fugitive from justice for his misdeeds. Such should ever be the fate of the unprincipled tyrannical persecutor. Look at the peculiar situation in which Thomson was placed, and then say if there be not some excuse—some palliation for the causticity of his remarks. Listen to Thomson's account of the treatment he has received, which he prefaces by a quotation from Dr. Harvey, pp. 13, 14: "By what unaccountable perversity in our frame does it appear, that we set ourselves against anything that is new? Can any behold, without scorn, such drones of physicians, and after the space of so many hundred year's experience and practice of their predecessors, not one single medicine has been detected that has the least force, directly to prevent, to oppose, and expel a continued fever? Should any, by a more sedulous observation, pretend to make the least step towards the discovery of such remedies, their hatred and envy would swell against him, as a legion of devils against virtue: the whole society will dart their malice at him, and torture him with all the calumnies imaginable, without sticking at anything that should destroy him, root and branch. For he who professes to be a reformer of the art of physic, must resolve to run the hazard of a martyrdom, of his reputation, life and estate."

Thomson then goes on to state what has taken place in his own person: "The treatment which the writer has received

from some of the learned physicians, since his discovery of the remedy for fever, and various other diseases, is a proof of the truth of this last saying of Dr. Harvey. They have imprisoned him, and charged him with everything cruel and unjust; though upon a fair trial, their violent dealings have come down upon their heads; while he has not only been proved innocent before the Court, but useful; having relieved many which the other physicians had given over to die." Again, (page 9) "This (his success in practice) greatly disturbed the learned doctors, and some of them undertook to destroy me, by reporting that I used poison; though they made no mention of my using their instruments of death—mercury, opium, ratsbane, nitre and the lancet. I considered it my duty to withstand them, though I found my overthrow was what they aimed at. A plan was once laid to take me in the night, but I escaped. Next, I was indicted, as though I had given poison, and a bill brought against me for wilful murder. I was bound in irons, and thrust into prison, to be kept there through the winter, without being allowed bail. I petitioned for, and obtained, a special court to try the cause, and was honorably acquitted, after forty days imprisonment. I maintained my integrity in the place where my persecution began. In five years, while vindicating this new and useful discovery, I lost five thousand dollars, besides all the persecution, trouble, loss of health and reproach, which has been in connection with the losses." What is there inexcusable in his retort upon such men? My colleague has shown that the attorney general has quoted but a part of Thomson's views, and by the context Thomson has not been guilty of such falsity as he is charged with.

Thomson enters largely into a description of his system and practice, and quotes considerably from medical authors respecting the character of their own medicines—is there anything improper in this? He undertakes to recommend his system and practice, on the ground of a thirty years' experience of their usefulness. This he tells the purchasers of a right to use them in his book. Is one of the many pur-

FRANCIS BURKE

chasers prepared to disprove the correctness of what has been said? My learned friend, the attorney general, charges the witnesses as coming into court, as volunteers, to testify for the prisoner—what impropriety there is in so doing, I know not, but such is not the fact—they are compelled to come here to testify for him. The attorney general has carefully avoided to consider the correct view of the case of Miss Williamson. Disease had made serious inroads upon her frame—unable scarcely to speak—an abscess wasting her vitals, and the presence of considerable fever—who that heard her so touchingly and artlessly relate the tale of her distresses and recovery, heard it unmoved? Who doubted its truth in every particular? If Mrs. Williams be not cured, the blooming countenance of Miss Williamson bears testimony to the skill and success of the prisoner at the bar, that colleges and diplomas can never confer. Her father had been sent for to see her die. Miss Williamson has gratitude to her deliverer—could it be otherwise? The attorney general charges the whole body of the Thomsonians in this city, who attempted to relieve their fellow citizens during the prevalence of the late epidemic, which threatened a desolation of our city, with having a conscience for themselves and a conscience for the community—they had, gentlemen of the jury—it was a conscience which induced those truly brothers of charity to leave the comforts and delights of their homes, and seek out, and endeavor to save the lives of their suffering fellow-beings, and at the peril of their own. It is no disgraceful conscience which induces its possessor to seek to secure the comfort and safety of his fellow creatures in the stead of his own, in the day of calamity—a conscience which seeks, not theirs, but them; and, that too, in a disease which had baffled the united skill of the physicians of the four quarters of the world. The physicians had theorized and tested everywhere, and to no good purpose. The deceased it is proved had cholera, was intemperate, and under the influence of great fear. Fear has been said to be a proximate cause of that disease—and where it is found in connection with the disease, it is attended with

fatal consequences. A certain physician said, "I killed so many, fear killed the rest." From what has been said and written upon the subject, take it for granted in cholera, where fear and intemperance are present, you may give the patient up as gone. Patrick, Moffitt, Townsend, and Dr. Hintze, say Hazelip was intemperate, and Dr. Hintze says he was fearful. West tells you he had shrivelled feet. Dr. Geddings unwillingly bears his testimony that it was a case of cholera—he says that a supernatural heat is a remarkable attendant upon cholera, and not the product of the steam. Professor Geddings admitted that he would not have known what had occasioned the death of Hazelip if the prisoner at the bar had not very candidly and unreservedly informed him that he gave him certain Thomsonian medicines and steam, which have not been extensively used by Dr. Geddings, and of which he knows but little from actual observation—while the witnesses testify that they and the prisoner have used everything here complained of to a greater extent and decided benefit. The other articles appear to be passed over as harmless, and the lobelia and steam which Professor Geddings supposes was the cause of Hazelip's death, are no longer a tenable ground for conviction. Professor Geddings says the lobelia produces a warmth and glow throughout the system; in this case the indications demanded it, and it was used for the purposes he acknowledges it is good to produce. The only difference on this point is Professor Geddings, who knows scarcely anything of lobelia, but what he has learned from another who gets nearly all his knowledge from hearsay, that it is a dangerous medicine—while the witnesses on the part of the prisoner, who have used, and very frequently seen it used in much larger quantities, say it is not dangerous, but harmless, and was never known to do injury—in this number is Roger Brooke, a gentleman upon whose judgment and veracity we can safely rely, who says he has known it as a remedy for disease of the eye, under the name of eye-bright for forty years, and for the last two years as lobelia; and although his acquaintance with it has been extensive, he never

has had reason to think the administration of it calculated to injure.

I look upon the present case rather as a triumph for, than a trial of my client, and hope when the attorney general has closed his remarks, and the case is sent to the jury that they will give their verdict without leaving the box; for the competency, kindness and character for every qualification and duty of a physician, are abundantly proved to be possessed by Mr. Burke.

MR. GILL'S CLOSING SPEECH.

Mr. Gill. Gentlemen of the Jury, there is one part of the address of the attorney for the defense (Mr. Stewart) in which I heartily concur. If the jury see no reason to believe that the death of Hazelip was not caused by the medicines of the prisoner at the bar—and that the prisoner at the bar is not chargeable with ignorance—want of attention or humanity—then in this case they need not retire from their seats to make up a verdict. The statements made by the witnesses go to prove that there are cogent reasons why Mr. Burke should be convicted, and I hope, whatever defects may have been discoverable in my management of the case, the jury will bear in mind that they are to rely on the testimony of the witnesses and the laws having reference to the subject. I have given much attention to this case, and have industriously put in requisition all my sources of information, and after the most laborious and patient investigation of its merits—guided by the best light of which I am capable—I can candidly say, I discover in it a subject of the deepest interest to the cause of humanity, and the happiness of the community—and, that it would greatly advance both, if, by a decision adverse to the prisoner at the bar, a stop could be put to the further spread of a practice founded upon such wild and uncertain speculations as those of Thomson. I am astonished any one can be so misled by it as to dare to undertake the cure of disease with such foolish and dangerous means. There is in it a something so unaccountable that I

know not how to admit or comprehend that there is not an improper and base motive in its whole bearing and history. I am not disposed to wish that Mr. Burke, if innocent, should be condemned and punished—and hope the whole court will do me the justice to believe the assertion. The jury should not be misled, and I hope that nothing that has fallen from me will have a tendency to mislead their judgments in the smallest particular. I am here to advance rational arguments and honest and fair conclusions. If I discharge my duty in these particulars, whatever is the event—whether Mr. Burke be acquitted or condemned, my duties to the society in which I live, and to the laws of the state, which I am here for the support of, are performed, and no censure because of the consequences can be attributable to me. The same may be said of the gentlemen who act as counsel for the prisoner. We must arrive at a knowledge of the subject under discussion by a careful examination of all its principles and bearings, and present them for the consideration of the Court.

I yet contend that it is not allowing sufficient scope to the investigation if the view in the present case does not embrace both the principles and the practice of Thomson in connection with the qualifications of Mr. Burke and the treatment pursued by him. Is the system of Thomson sustained by fair and logical arguments? Do the counsel for the prisoner enter into an examination of it. Press them to it and they tell you that there is no necessity for an examination into its merits—if so, how then can correct conclusions be drawn on the propriety of the administration of their medicines—the counsel for the prisoner say, and the bench say, it is unnecessary for the trial of the case before you. I am sorry for it, and must submit to the weight of circumstances. I still think while we are disposing of the subject it would be better to decide upon the whole ground of controversy, and settle the question for the benefit of the community. Notwithstanding the decision of the bench, I hope I shall be indulged if I occasionally advert to Thomson's system or rule of government in the administration of the medicines. The

counsel for the prisoner would confine the whole subject to a sort of mathematical argumentation. Thomson says all constitutions are alike—and they defend the doctrine that all persons should be treated alike. Because one person may be steamed three or four hours without injury, another person may be steamed the same length of time without cause for reflection upon the operator or administrator, if the case terminates unfavorably. This appears to be the rule of argument of the defendant's counsel. Let us not be led astray any longer by wild and visionary postulates, but judge of the principle by testing and carrying it into all the minutiae of the practice. If the practice be not safe then is the principle false, and the principle and practice being at discord, they can, neither, with safety be depended upon, and both are dangerous in their application to the removal of disease, and particularly so in the hands of the illiterate.

Let us come back to an examination of the bone and sinew of the argument. If all constitutions are alike, then must all persons laboring under disease be necessitated to submit to the same sort of treatment. Lobelia and steam must be administered alike to all. No one having any share of common sense would admit either the premises or conclusions to be correct. We know all diseases have different degrees of virulence and some are opposite in their nature. Others vary in their type in different constitutions—different climates, and under different circumstances of attack—yet, must they all be treated alike—will one general mode of cure—one general remedy relieve from all? The cholera is said to be the bane of the intemperate, and that the temperate are most likely to escape, because the attack takes place under different circumstances in the one from the other. But would any one be so foolhardy to apply the same remedy for the relief of both in all the varieties and shades of attack. Certainly none would dare to do it without richly meriting, at least the charge of insanity. If all other sources of information are proscribed but what is contained in this book of Thomson's, where can Francis Burke get general skill to practice medicine safely and suc-

cessfully? Why, gentlemen, Thomson and his followers, deny the use of medical skill—they hold general science in contempt, and treat with derision, all arguments which go to say that if they practice, they should have a general knowledge of medical science. It does more—by the assumption that a universal infallible remedy has been discovered, it checks the spirit of research and prevents all attempts in its followers from essaying to make future beneficial discoveries on the subject, and intrenches them in impenetrable ignorance, the better to prevent them from seeing the falsity of his arrogated powers of divinity, in the immutability of his system and practice; for, if everything has been already done to perfect the art of healing, all further exertion on the subject, all further research is worse than useless—it is a censurable waste of time.

The present epidemic, which now desolates our beloved country, is characterized by symptoms and effects novel in their nature, and awful in their termination. The most acute, learned and patiently labored investigations have been made, in order to ascertain its causes, the reason of its erratic deadly spread, and the best means of cure—they yet disagree—but they disagree as men confident in the purity of the intention of their competitors in science—all their writings teem with respect for the motives (however they may differ in their conclusions) of each other. A confidence is apparent that a spirit of universal charity, and anxiety for the universal spread of useful knowledge pervades the general mass—for true “charity thinketh no ill of his neighbor.” Is this the case with Thomson and his followers? Every page—nay, almost every line in this book shows it is not. Misrepresentation, misconstruction and malignity and selfishness are stamped in indelible characters on every page—and the grossed minds of its purchasers partake of the hateful disgusting food, and the poison enters, and is diffused through all their intellectual powers. A spirit of blind confidence is generated in their minds. The medicines, however powerful in their nature, because a small quantity may not injure,

it is argued, are innocent and harmless in large ones, and a reckless and injurious course of administration which should, by some means, be speedily put a stop to, immediately prompts them to deem out to be swallowed by the too credulous suffering patient the means of death, in the effort to save life. It appears evident, that the Thomsonian remedies have not been administered, in the present case, with sufficient care and discretion. The medicines may, in some cases, and under certain conditions of disease, be very useful, but in others, they must certainly do much harm. Whether the treatment of the patient by the prisoner has been beneficial or not, is the legitimate subject for our investigation, and I am bound, by every consideration of duty and honor, to pursue it. I am bound to make inquiry into it, without looking to the consequences which may grow out of it. The question of mere exercise of humanity, is not involved in it, nor does it, only, enter into the argument, what is the motive? The deed and the consequences of a blind administration of such medicines, is what most claims our present attention. Where is the prisoner's skill to be derived from? He denies himself the means of access to its acquisition—he shuts out the means of its attainment. The counsel for the prisoner, in argument against the medical faculty, says they have theorized and theorized uselessly, and that they are themselves but visionary supposers. Dr. Brown, they say, supposes disease to be originated by too great or too small a degree of heat—and, that he boastingly said, give him a brandy bottle and a lancet, and he could cure all diseases—if there was too great excitement, he would bleed—if too little, he would stimulate. When the cholera first appeared, every leading physician had a mode of treatment peculiar to himself. Camphor and a variety of other things had their day, and were vanished—one after another had been recommended, and as often given up—but they did not stop to say what effect they had upon the general mass. No man, possessed of common sense, will believe that they did not benefit many, but if better could be substituted, it was proper and right it should be so. The deliriums

of fancy are not to be relied upon. Dr. Brown's doctrine of too much irritability and depletion was not more visionary than Thomson's doctrine of heat and cold—the keeping the fountain above the stream, if below it, by the brandy bottle, and letting down the heat by bleeding, bore a strong analogy to Thomson's system of lobelia and steaming. The lancet and the steams run parallel with each other—they are both depletives. The theory of Dr. Thomson is by no means new; it is as old as the history of medicine—"heat is life," says Hippocrates, and all the authors which succeeded him, reiterate the same doctrine; but they are not mad enough to blend cause and effect, as he does. Dr. Sangrado says to his pupil, Gil Blas, and the rest of his household—"drink, my children, health consists in the suppleness and humectation of the parts; drink water in great abundance; it is an universal menstruum that dissolves all kinds of salt. When the course of the blood is too languid, this accelerates its motion; and, when too rapid, checks its impetuosity." I have no design to turn a grave subject into ridicule. I am engaged in exposing gross folly. Thomson's universal menstruum or remedy is heat, applied in the two-fold novel practice of lobelia and steam. Dr. Thomson has put forth one single agent, which is, and sustains the principle of life—heat. But what he means by heat, he does not seem to understand himself, and, of course, I, that do not understand him, cannot tell you. This I understand, at least—Thomson has started with, and maintained throughout his book, a deliberate design to slander the whole medical world. "The regular physicians" are charged with trying "how much" poison "a patient can bear without producing death." The charge is too malicious and preposterous to need comment. With great self-complacency he talks of the "learned doctors," and describes them, although "learned," as ignorant of the plainest principles of their science. The "learned doctors" bleeding is against the constitution and life of the patient. The learned counsel for the defendant says, as an excuse for his slanders, Thomson has been put to great trouble and expense, causelessly, by

certain of the members of the medical faculty—if it were true, it affords no excuse for the indiscriminate slanders which he deals out against the whole body—it is no excuse for slanders at all. Let gentlemen recollect the trial, read to the Court of this same Thomson, from the Massachusetts Reports—let them read it carefully, and they cannot come from an examination of it without feelings of detestation and horror, for the contemptible discoverer of medicines, which, in his low cant, he terms *ram-cat*, *well-my-grizzle*, and of such stuff as “will go down, presently, and unscrew his naval!” I am not, strange as it may seem, coining names in contempt, but repeat what the witnesses on oath say, were the names given to his medicines by Thomson himself. Thomson must be exceedingly ignorant of botany—in his description of the plant from which he manufactures his nerve powder, he says, “There are four species of this valuable vegetable, one male, and three females,” etc. “The male is called yellow umbil,” etc. “The female kinds are distinguished by the color of the blossoms, which are red, red and white, and white,” etc. Was such a thing ever known, that in four “species” there was but one male, and that one of a different color from the three females, who have distinct colors, and yet the “four species” preserve their distinguishing characteristics of color, and are propagated by “one male.” Truly, Dr. Thomson is a surprisingly great discoverer! He is as much in advance of the rest of the world in the knowledge of the science of botany (for he distinguishes the sexes of plants by the color of the blossoms) as he is in the science of medicine!

An argument has been forced out by the defendant’s counsel, to prove that the administration of the lobelia and steam, was in accordance with the ideas of the physicians—on the contrary, the physicians say, that they are improper and dangerous remedies. Dr. Geddings tells you, that the immediate effects are, “to increase the circulation, and, consequently, to produce a greater flow of the blood to the heart and arteries”; and, if carried to a certain extent, Dr. Cole says, “it would not have a tendency to relieve congestion.” It is con-

tended on the part of the defense, that they cannot do harm, and that lobelia is perfectly innocent—it is so efficacious, that Mr. Sweeney calls it sampson. Such a name is usually given to indicate strength—I presume it is so in the present instance; and, the greater the strength, the greater the injury liable to its administration. The steam, as argued by the defendant's counsel, is not, necessarily, small, because of the size of the aperture through which it enters the pipe—nor of the pipe, which is proved to be of the diameter of one inch, as is seen on the table of the counsel. The temperature of the steam does not depend upon the pipe—the smaller the pipe, the greater the degree of heat from the steam, because the greater the quantity of steam, the greater the power of resistance from the surrounding atmosphere. I was not present, and did not know its temperature and power of action, but have treated the subject on the gentlemen's mathematical principles. This one thing is certain—there were evidences of gross inattention and ignorance displayed in this part of the treatment. The force of steam was so great that one of the witnesses had to put his handkerchief next the pipe, before he could grasp it—and the distance of the generator from the steam cot required great force of heat to propel it so far and to keep up such a high temperature. The physicians all say that it is their concurrent opinion, the lobelia and steam administered in such excess, were the cause of Hazelip's death. That they will produce injurious tendencies—affecting the stomach, intestines, lungs, liver and brains—and give rise to congestion and inflammations of their most important structures—because the increased circulation to the surface is produced by an increased circulation of the heat and arteries, and when over action by its continuation is produced, engorgements, etc., are the necessary consequences. (A comparison was then instituted between the degree of credence to be paid to the character of the testimony, which went to show that the witnesses for the defense had not equal judgment with the physicians in matters of fact respecting the tendency of the med-

icines administered—after which, the *Attorney General* submitted the case to the decision of the jury.)

THE CHARGE TO THE JURY.

Judge BRICE. Gentlemen of the Jury: This is certainly a case of much importance, not only to the public, but to the practitioners of medicine in general, as well as to the individual whose conduct is now the subject of investigation; and as it is not one of ordinary occurrence, the jury will no doubt be rather gratified than otherwise in having the assistance of the Court in making up a correct verdict.

We have had several occasions in the progress of this cause to state what we now think proper to repeat, that it is not your province to decide on the merits or demerits of the Thomsonian theory and mode of practice, compared with others. Whether he has or has not made any valuable discovery in the science of medicine, as he and his followers assert he has, must be referred to the discussion of the learned faculty and the test of experience; the province of the criminal code, which we are called on to administer, is confined to the investigation of human actions and motives only. Your inquiries, therefore, will be directed to what was the actual effect and operation of the medicines used on the person of the deceased as causes of his death, and the qualification of the prisoner to administer them, without regarding the particular system or theory on which his practice is founded. It will depend upon your opinions on these subjects, whether the death of the patient shall be attributed to the prisoner as his misfortune or his fault—mistake or a crime.

To support the issue on behalf of the state, it must be proved to your entire satisfaction that the deceased came to his death by the means stated in the indictment. If you should be of opinion, that he did not, there is an end of the cause; the prisoner must be acquitted—but if, on the contrary, you shall be satisfied that the death was caused by the medicine used, and other treatment directed by the prisoner,

the latter will be criminally responsible for his agency, provided you shall be satisfied from the evidence that he was either grossly ignorant of his profession, or was guilty of gross rashness and imprudence in the management of the case under his care. The first principle is adopted by the law to prevent ignorant persons from a presumptuous tampering with human life, and the second to enforce the duty of diligence in the administration of the means of cure when once commenced.

To avoid the imputation of gross ignorance, it is not necessary that the physician shall have pursued any prescribed course of study, or be attached to any particular system of medicine—nor is it material in the view of the criminal code whether he has been licensed by the faculty or not; but it is incumbent on him, when required, to give satisfactory proof that he had, at least, what the law books term a general competency, and that he had acquired from study or practice and observation, such a degree of skill and experience in his profession as would warrant a discreet and conscientious man in believing himself competent to discharge the duties he had undertaken to perform. In deciding on this part of the case, the prisoner will be entitled to the benefit of the very respectable testimony given of his skill and long experience, and of the success with which he and others have administered the same remedies which were used in the case under consideration. If you believe this testimony, we think he will be entitled to an acquittal from the charge of gross ignorance.

If the general competency of the prisoner is established to your satisfaction, the remaining inquiry will be as to the correctness of the imputation of gross rashness and extreme indiscretion in the application of the means of cure adopted by him.

This is certainly a grave charge, and if supported by the testimony, will justly consign the prisoner to infamy and punishment; but before you draw such a conclusion, it is proper for the Court to inform you that the fact ought to be sustained by such cogent and irresistible proof as will leave

no rational doubt on your minds of its truth; for where there is a rational doubt, the rules of law, as well as the dictates of charity, prefer attributing the melancholy event to any other cause which is consistent with the prisoner's innocence, rather than to that reckless and criminal indifference to human suffering, which is characterized by gross rashness and want of due care. Physicians are all deeply interested in the question of responsibility in cases of this kind; they are often obliged to exercise a discretion which to bystanders and unskillful persons may appear rash and unfeeling, but which may, nevertheless, be dictated by the soundest judgment and the kindest feelings towards the patient, and an anxious desire to promote his recovery. To use the language of Lord Hale, "God forbid that a failure should subject the unfortunate practitioner to a criminal prosecution, when he has done the best he could to effect a cure."

It will be for you, gentlemen, to apply these principles to the present case, according to your understanding of the testimony.

To sum up the whole, the Court are of opinion, and so direct the jury, that if they shall find from the testimony that the prisoner was either grossly ignorant of his profession, or acted with improper rashness and want of due caution in the care of his patient, and shall also be of opinion that the death of the patient ensued from the causes assigned in the indictment, then they should find a verdict of guilty; but, if, on the contrary, the jury shall be of opinion, that the prisoner was possessed of reasonable competency in the line of his profession, and that he applied the remedies to the best of his judgment, and with an honest design, to effect a cure or prevent disease, he is not guilty of the alleged crime, although the death was owing to the causes set forth in the indictment"

THE VERDICT.

The *Jury* retired and returned in a short time with a verdict of *Not Guilty*.

THE TRIAL OF CHARLES SPRAGUE FOR ROBBERY, BROOKLYN, NEW YORK, 1849.

THE NARRATIVE.

One morning in the summer of 1849, a young girl was going to her daily work, when she was seized by a man who threw her down, pulled off one of her shoes and ran off with it. He was on the way to his daily labor also, and when he reached the printing office, after hanging his overcoat on a nail, he quietly took his place at his case and began setting type as usual. When the story reached the office, and he was asked where the shoe was, he replied that it was in the pocket of his overcoat, where it was found. Tried for robbery, his father, a Congregational clergyman, told to the jury a strange story of how he was always peculiar in his ways, the result of several falls when a boy, how he was too backward to ever prepare for college and how for years he had the habit of stealing women's shoes whenever and wherever he could lay his hands on them. Two physicians testified that this was a form of insanity, and the jury acquitted him on this ground.

THE TRIAL.¹

In the Court of Oyer and Terminor for Kings County (Brooklyn), New York, October, 1849.

MR. JUSTICE MORSE,²*Presiding.*

The prisoner, *Charles Sprague*, had been heretofore indicted for robbery, alleged to have taken place on August 18 last. He pleaded *Not Guilty*.

¹ *Bibliography.* "Reports of the Decisions in Criminal Cases made at Term at Chambers and in the Courts of Oyer and Terminor of the State of New York. By Amasa J. Parker, LL. D., one of the Justices of the Supreme Court. In 6 Vols. Albany and New York. Gould, Banks & Co. 1855."

² See p. 92.

H. B. Duryea,³ District Attorney, for the People.
*J. Dikeman*⁴ and *A. J. Spooner*,⁵ for the Prisoner.

THE EVIDENCE.

Sarah Watson. I am the complainant in this case. About eight on the morning of August 18th, last, I was walking along Pearl street in Brooklyn. Heard some person behind me; looked round and saw prisoner, who immediately seized me, threw me down, took a shoe from one of my feet, and ran away. I was wearing a gold chain, but it could not be seen by him. There was a man near by, whom I did not know. He hallooed at prisoner, and gave chase to him. The prisoner, however, outran him and escaped.

The shoe produced is the one I wore and which prisoner took from my foot.

James Smith. Am a printer and one of the proprietors of the Long Island Star newspaper. Prisoner was employed by me as a journeyman printer. Remember the morning of August 18th. Prisoner arrived at the office that morning at the usual time, hung up his overcoat and went to work as usual. About ten o'clock we learned of the outrage on Miss Watson, and that Sprague was the man, and so I asked him where the shoe was. He answered at once: "It's in my overcoat pocket." We searched and found it there. The shoe produced is the one. Prisoner made no attempt to conceal or to explain anything.

Mr. Dikeman. The prisoner is certainly guilty if he is sane, and we shall simply endeavor to prove that as to the offense charged he was not and is not in his right mind and is therefore not punishable for the act.

THE DEFENSE.

Rev. Isaac N. Sprague. Am a Congregational minister and the father of Charles, the prisoner. He is twenty-five years of age; he has generally resided at home, but he spent a year with a brother at Hartford, Conn., where he went about

four years ago; since his return from Hartford he has lived at home. He is married, and with his wife was living at my house at the time of the assault upon Miss Watson; Charles has at different times received wounds and bruises upon the head;

³ DURYEA, HARMANUS B. Born 1815, Newtown, N. Y. District Attorney Queens Co., 1847. Member New York Assembly, 1857. Served in the Civil War.

⁴ See p. 92.

⁵ SPOONER, ALDEN JEREMIAH. (1810-1881.) Born Sag Harbor, N. Y. Although a lawyer, he is best known as a historian. He founded the Long Island Historical Society, in 1863, collected a large library, and wrote much on historical topics.

when quite young he was struck with a hoe near the crown of the head, producing an open wound, which after some time closed and healed up; when about twelve years old he fell from a cherry tree, striking upon his head. I moved with my family to Hartford in 1837 and soon after Charles fell from the balcony of a second story, and was brought home insensible; no immediate effect seemed to be produced upon his mind by this accident, but very soon after his conduct became strange. My own mother has been insane for eight years, and some time in an insane hospital; a brother of mother became insane and hung himself; two of her sisters were occasionally insane; my grandmother, on my mother's side, was also insane. Myself and wife have always known the mind of prisoner to be not as strong as the minds of our other children; after the fall from the balcony he was more carefully watched and kept in, and some painful indications were developed—as at times a remarkable prominence of the eye, and a dullness, which appeared to increase, and a physician was consulted. We tried to educate him for college, but found it could not be done. Sometimes at home a shoe of some female member of the family would be missing, and when found would be wet and crumpled up; a girl, named Almira Godfrey, who was living in my family at the time, was at first suspected, but at length one of her shoes was missing, and when found was also wet and crumpled like the others. We then suspected Charley, and soon found it was he who took away the shoes.

When a shoe was missing, it would be found sometimes under his pillow, sometimes between the straw and feather bed, sometimes in his trunk, and sometimes in his pocket, generally with clothes wound round the shoe, as if to conceal it. Charles, before his fall from the balcony, had been truthful, and of a frank and open demeanor, and willing to acknowledge the truth, though to his disadvantage, but when I spoke about the shoe, he would hang his head and say he did not know, but the shoe would be found somewhere secreted; when a shoe had been missed, and found under his pillow, his mother would say to him, "Charley, another shoe gone;" to which he would reply, "I'm sure I didn't do it;" his mother would say, "I found it under your pillow;" then he would admit it. He seemed not to remember the fact. I punished him for taking shoes, but I soon thought I could recognize the features of insanity in his conduct. Pains were taken to keep shoes out of his way, and they were put in drawers, and he would take them out of the drawers in the night. At times Charles had fullness of eyes, a vacancy of the eye was frequently apparent. We kept him in evenings, and away from exciting amusements. About the time of this assault he complained a good deal of headache. I sometimes sent Charles to the country. He was once away for about two years. His practice of taking and secreting shoes has continued down to the present time, although it has intermitted. I went to board with prisoner last May. His wife would miss her

shoes occasionally, and they would be found where the prisoner had secreted them.

Cross-examined. I myself saw the wound from the hoe; did not see the wound caused by the prisoner's fall from the cherry tree, which took place in Vermont; saw the wound occasioned by the fall from the balcony; soon after came the protruding and glassiness of the eye; he was then between twelve and fourteen years old, and went to school; his moral sense seemed to be somewhat blunted; he was not as truthful as before.

Thomas Sprague, of Michigan (a brother of prisoner), *Mary E.*, his wife, *Julia A. Hyde*, a sister of prisoner's father, and *Oliver Hyde*, her husband, testified to the prisoner's habit, while living with them, to take ladies' shoes and secrete them. They also testified to the fact of the fall from the cherry tree in Vermont and to the insanity of the relations of the prisoner.

Charles H. Nichols, M. D. From May, 1847, to March, 1849, was physician at the State Insane Asylum at Utica, and in April, 1849, came to the asylum

at Bloomingdale, of which I have charge now. While at Utica there were about eight hundred patients in the asylum, and about one hundred and fifty at Bloomingdale. From the testimony in the case, I am clearly of opinion that the prisoner was laboring under derangement of mind; the act charged appears to me to be an insane act; it is not uncommon for monomaniacs to secrete, and to endeavor to escape; cases of strict monomania are very rare, but do exist, and in such cases all conduct not affected by the peculiar delusion, may be perfectly rational. Cases of insane impulse are more frequent than those of monomania; acts done under insane impulse are more likely to be remembered than those done under the influence of monomania.

Theodore L. Mason, M. D. Insanity is the genus, monomania a species, and the impulsive characteristic may be common to both general and partial insanity. Am of the opinion that the prisoner was partially insane, and that the act for which he is on trial, was done from an insane impulse.

The evidence being closed, the case was submitted without argument.

MORSE, J. (to the jury). There is no question made, that the prisoner had done the act alleged in the indictment, and the only question for you to decide is whether the prisoner at the time of the act done, was a responsible moral agent. If at the time he did the act the prisoner was of sound mind, and capable of judging between right and wrong, then he is guilty of the crime charged upon him, but if he was of unsound mind, and acting under an impulse which at the time overthrew or obscured his knowledge, or capacity to judge

of right and wrong, then he was not capable of committing a crime, and must be pronounced not guilty. It seems quite unnecessary to go into any consideration of the question of general insanity, as the whole defense has been put upon the ground that the prisoner was partially insane, and that the peculiarity of his insanity consisted in what appears to the sane mind an objectless desire to possess himself of the shoes of females, and to hide and spoil them. Insanity, as a defense, is an affirmative matter, and in order to be allowed, must be proved beyond all reasonable doubt. If you are satisfied beyond reasonable doubt that the prisoner did the act charged in the indictment under an insane impulse, being at the time incapable of knowing right from wrong, it will be your duty to return a verdict of not guilty; but if you are not satisfied of the prisoner's insanity, it will be your duty to find a verdict of guilty.

After a short absence, the *Jury* returned with a verdict of *Not Guilty*. *

* MORSE, NATHAN BREWSTER. (1797-1886.) Born Canterbury, Conn. Studied law at Killingly, Conn. Admitted to Connecticut Bar. Moved to Brooklyn, N. Y., 1825. District Attorney Kings Co., 1830-1833, 1839-1847. County Judge, 1833-1838. Justice Supreme Court, 1847. Sat on Court of Appeals, 1853. President Fulton Ferry Co., Brooklyn.

DIKEMAN, JOHN. (1795-1879.) Born Hempstead, L. I. Studied law (Brooklyn) under Judge Radcliffe. Principal of the first public school in Brooklyn. Clerk of Village, 1821. First Judge Court of Common Pleas, Kings Co., 1830. Member of Assembly, 1836. County Judge, Kings Co., 1863-1867.

THE TRIAL OF PROFESSOR JOHN W. WEBSTER, FOR THE MURDER OF DR. GEORGE PARKMAN, BOSTON, MASSACHUSETTS, 1850.

THE NARRATIVE.

On Friday, November 23, 1849, Dr. George Parkman, one of the most prominent physicians of the City of Boston, a man of wealth and the owner of much real estate in the city, mysteriously disappeared. He had left his home about noon, stating that he had an appointment to keep at half past two with a gentleman who had called at his house that morning, and about one o'clock he entered a grocery store near his residence, purchased some articles there, which he ordered to be sent home, and asked permission to leave for a few minutes a small paper bag containing a head of lettuce.¹ A little while later he was seen entering the Medical Building of Harvard College.² Being very methodical in his habits, when he did not return home that night his family suspected foul play, particularly as he was the owner of numerous tenement houses and was a rather hard landlord. Notices were published in the city papers, handbills were circulated and the police on Saturday began a systematic search. The river was dredged and the houses of his tenants were thoroughly examined, and the Medical College was given a rather cursory search.³

On Sunday afternoon, Dr. John W. Webster called at the house of Rev. Francis Parkman, a brother of the missing man, and told him that he was the person who had made the appointment with Dr. Parkman on the Friday morning; and that he had come to his office about two o'clock.⁴

¹ Paul Holland, *post*, p. 122.

² Fisher A. Bosworth, *post*, p. 178.

³ Charles M. Kingsley, *post*, p. 114; Francis Tukey, *post*, p. 119.

⁴ Rev. Francis Parkman, *post*, p. 162.

Dr. Webster^{4a} was Professor of Chemistry in Harvard College, and delivered lectures and had his office and laboratory in the Medical Building. He stood high in the social and professional world, and his family and the Parkmans were on terms of considerable intimacy. But Professor Webster's salary was not large; he had a family of grown up daughters; his position rendered it necessary for him to keep up a rather expensive style of living and he was deeply in debt. In his needs he had applied to Dr. Parkman, who had loaned him a good deal of money and had taken a mortgage not only upon his household goods, but upon a valuable collection of minerals which he owned.⁵

Professor Webster, being the last person who had seen Dr. Parkman alive, was of course asked to tell all he knew on the subject. He stated that Dr. Parkman called on him to collect a sum of money which he had borrowed from him and which he had told him in the morning he was ready to pay that day; that he paid him the money; that Dr. Parkman returned him his note, promised to cancel the mortgage and then left in a great hurry and that he had never seen him since.⁶ The money, he said, was the proceeds of the sale of tickets to his lectures which he had received that day. Professor Webster's standing in the community was so high that his account was implicitly received, and when as a matter of form the police decided to search all the rooms of the Medical College, an apology was made to him for the intrusion.

^{4a} Dr. John White Webster was born in Boston, May 20, 1793. He was Professor of Chemistry at Harvard from 1824 to 1850, and author of several scientific and literary works. One reporter thus describes his appearance on the first day of the trial: "On taking his seat, Professor Webster smiled as he saluted several friends and acquaintances, to some of whom he nodded familiarly, and a stranger would have taken him for an ordinary spectator. He wore spectacles, and sat with ease and dignified composure in the dock, occasionally shaking hands with some of his friends. The countenance of the prisoner indicated to the physiognomist strong animal passion and animal temperament. The cheek bones are high, and the mouth, with compressed lips betray great resolution and firmness of character; the forehead is inclined to angular, rather low and partially retreating; standing below the medium height and by no means a man of great muscular strength."

⁵ Robt. G. Shaw, *post*, p. 117

⁶ William Calhoun, *post*, p. 150; Geo. W. Trenholm, *post*, p. 151.

But there was one man who was not satisfied—Ephraim Littlefield, the janitor of the Medical Building.⁷ He had noticed that for several days the doors of Dr. Webster's office and laboratory had been locked, which was very unusual; that the professor had been at work there on Saturday (which was a holiday) and on Sunday and Monday, which was quite contrary to his custom; that when he knocked at the door the professor would not let him in and that the furnace was very hot during all this time and that there were peculiar spots on the stairs to the cellar and on its walls. He told his wife of his suspicions and she aided him in making a search on his own account, watching at the window to notify her husband if the professor should return to his office. The janitor soon became convinced that all was not right and made known his suspicions to Dr. Parkman's family, whereupon a second and thorough search was made of the cellar and Professor Webster's apartments in the Medical Building. This time there was discovered in the ashes of the furnace, which had now cooled down, a human skull and a set of artificial teeth; in a private closet of the professor's was found part of a human leg and in a tea chest hidden in the cellar another leg and the upper part of a man's body.⁸ Surgeons who put the remains together reported that they were those of a man about the height of Dr. Parkman;⁹ that the dismemberment must have been done by one having a knowledge of anatomy and the Professor of Anatomy declared that they were not part of any subject that had been used in the college for the purposes of dissection.¹⁰ And finally the dentist who had made a full set of false teeth for Dr. Parkman identified the set found in the furnace as his, and he produced the model which fitted the plate exactly.¹¹ Professor Webster was at once arrested and accused of being the murderer, but he boldly declared his innocence and charged that he was the victim of a conspiracy.

The trial took place before Chief Justice Shaw and three

⁷ Ephraim Littlefield, *post*, p. 133.

⁸ Derastus Clapp, *post*, p. 156.

⁹ Woodbridge Strong, *post*, p. 126; Charles T. Jackson, *post*, p. 128.

¹⁰ Frederick S. Ainsworth, *post*, p. 127.

¹¹ Nathan C. Keep, *post*, p. 129.

associate Judges of the Supreme Court. The evidence of the surgeons and dentist sufficiently proved that the body found in the College Building was that of Dr. Parkman. And to prove that Professor Webster was the murderer the prosecution established a number of facts: (1) Dr. Parkman had called on Professor Webster four days before the fatal day and had abused his debtor for his delay in paying his debt.¹² (2) Professor Webster had sold the minerals which he had mortgaged to the doctor to another person and had been paid the consideration; the doctor had discovered the fraud and was threatening to prosecute the professor for the crime and have him removed from the faculty.¹³ (3) The professor had deposited the money received for the lecture tickets in his bank.¹⁴ (4) His action for several days in keeping the room in the building locked and refusing to allow even the janitor to enter.¹⁵ (5) His endeavors to dissuade the officers making the search from going into the room where part of the remains were found.¹⁶ (6) Some of the remains were tied with twine which was proved to have been purchased by him about the day of the murder. (7) Spots of blood were found on the clothes he wore in the laboratory on the days immediately after the murder.

While the search was being made for Dr. Parkman the City Marshal of Boston received three anonymous letters. One that seemed to be written by an illiterate person suggested that a search be made on "brooklynt Heights," the second stated that Dr. Parkman had gone to sea on the ship "Herculian," and the third, which was signed "Civis," declared that the missing man had been seen in Cambridge several days after the remains were discovered.¹⁷ But the handwriting experts swore positively that all three letters were written by Professor Webster.¹⁸

The defense produced a host of witnesses,—the leaders in society, literature, science and affairs in the Boston world,—

¹² Ephraim Littlefield, *post*, p. 133.

¹³ Robt. G. Shaw, *post*, p. 118.

¹⁴ John B. Dana, *post*, p. 161.

¹⁵ Ephraim Littlefield, *post*, p. 133.

¹⁶ Derastus Clapp, *post*, p. 152.

¹⁷ Francis Tukey, *post*, p. 173.

¹⁸ N. H. Gould, *post*, p. 178; George C. Smith, *post*, p. 178.

who testified to the previous good character of Dr. Webster, and several persons swore that they had met Dr. Parkman on the street after the time at which the prisoner claimed he had left the Medical Building. But the jury was not long in finding a verdict of guilty and he was sentenced by the Chief Justice to be hanged.

Professor Webster continued to maintain his innocence and in a petition to the Governor declared in the most solemn terms that he was the victim of a foul conspiracy. Finding this of no avail, he made a confession to his clergyman, in which he stated that in a dispute over the debt in his office that afternoon and exasperated by the threats of his creditor to send him to jail and drive him from the college and from society, he had struck him over the head with a stick of wood, and then finding that he had killed him, had been afraid to tell the truth, but had tried to conceal the whole matter by getting rid of the body. But as there was no proof that this story was true other than his own word, and as he had lied about everything relating to the case for months, the Governor refused to interfere and he was hanged.

THE TRIAL.¹⁹

In the Supreme Judicial Court of Massachusetts, Boston, March, 1850.

HON. LEMUEL SHAW,²⁰ *Chief Justice.*

SAMUEL S. WILDE,²¹

CHARLES A. DEWEY,²² } *Associate Justices.*

THERON METCALF,²³

January 26.

On this day the Grand Jury for the County of Suffolk returned into the Municipal Court of the City of Boston an indictment against John W. Webster for the murder on Novem-

¹⁹ *Bibliography.* *"Report of the case of John W. Webster, Master of Arts and Doctor of Medicine of Harvard University; member of the Massachusetts Medical Society, of the American Academy of Arts and Sciences, of the London Geological Society, and of the St. Petersburg Mineralogical Society; and Erving Professor of Chemistry and Mineralogy in Harvard University; indicted for the murder of George Parkman, Master of Arts of Har-

ber 23, 1849, of George Parkman. In the first count the murder was charged to have been committed with a knife, in the second count with a hammer, in the third and fourth counts with "some means, instruments and weapons to the jury unknown." On the same day the indictment was ordered trans-

vard University, Doctor of Medicine of the University of Aberdeen, and member of the Massachusetts Medical Society, before the Supreme Judicial Court of Massachusetts; including the hearing on the petition for a writ of error, the prisoner's confessional statements and application for a commutation of sentence, and an appendix containing several interesting matters never before published. By George Bemis, Esq., one of the counsel in the case. Boston: Charles C. Little and James Brown. 1850." This is the official report. It is illustrated with plans and maps, and has for its frontispiece an engraving of the medical building in which the murder was committed.

*"Trial of Prof. John W. Webster for the murder of Dr. George Parkman. As reported for and published in the Boston Daily Times. Supreme Judicial Court of Massachusetts, sitting in Boston, composed of Chief Justice Shaw, and Associate Justices Metcalfe and Wilde. Boston: Published by Roberts & Garfield, No. 3 State Street, 1850."

*"The Parkman Murder. Trial of Prof. John W. Webster, for Murder of Dr. George Parkman, November 23, 1849, before the Supreme Judicial Court, in the City of Boston. With Numerous Accurate Illustrations. Boston: Printed at The Daily Mail Office, 14 and 16 State Street."

*"Illegality of the Trial of John W. Webster. By Lysander Spooner. Boston: Bela Marsh, 25 Cornhill. 1850."

*"A Review of the Webster Case by a Member of the New York Bar. 'In civil cases, it is sufficient if the evidence on the whole agrees with and supports the hypothesis which it is adduced to prove; but in criminal cases, it must exclude every other hypothesis but that of the guilt of the party'—Greenleaf on Evidence, Sec. 13, *et seq.* New York: J. S. Redfield, Clinton Hall. Redding & Co., 8 State Street, Boston. W. B. Zieber, Philadelphia. 1850."

*"The Trial of Prof. John W. Webster, indicted for the murder of Dr. George Parkman, at the Medical College (North Grove Street), on the 23d of November, 1849. Supreme Judicial Court. Reported for the Boston Journal. Boston: Redding & Company, 8 State Street. 1850."

*"Trial of Professor John W. Webster, for the murder of Doctor George Parkman. Reported exclusively for the N. Y. Daily Globe. New York: Stringer & Townsend, 222 Broadway. Printed at the Globe Office, 1850."

*"Report of the Trial of Prof. John W. Webster, indicted for the murder of Dr. George Parkman before the Supreme Judicial Court of Massachusetts, Holden at Boston, on Tuesday, March 19, 1850."

mitted to the Supreme Judicial Court and on January 30 it was filed in that court. On February 9 the prisoner was arraigned before Mr. Justice Fletcher²⁴ and pleaded *Not Guilty*.

March 19.

This being the day set for the trial, the Judges entered at nine o'clock and took their seats upon the bench.²⁵

John H. Clifford,²⁶ Attorney General, and *George Bemis*,²⁷ for the Commonwealth.

*Pliny Merrick*²⁸ and *Edward D. Sohler*,²⁹ for the Prisoner.

The Clerk called the names of the sixty jurors summoned,

Phonographic report, by Dr. James W. Stone. Boston: Phillips, Sampson & Company, 110 Washington Street. 1850."

*"Trial of John W. Webster for the murder of Dr. George Parkman. By a member of the New York Bar. New York: Cockcroft & Co. 1879." This is a reprint of the Bemis report with notes on the questions of circumstantial evidence and the *corpus delicti*. The maps and plans of the original edition are reproduced, but the frontispiece is a portrait of Dr. Webster, and on page 70 is a peculiar portrait of Dr. Parkman.

***Report of the Case of John W. Webster, indicted for murder of George Parkman. By George Bemis, Esq. Detroit Collector Publishing Co. 1897." This is a rather recent report of the Bemis report, but it lacks its plans and illustrations.

²⁰ See 1 Am. St. Tr. 443.

²¹ WILDE, SAMUEL. (1771-1855.) Born Taunton, Mas. Graduated Dartmouth College, 1789. Studied law with David L. Barnes; afterwards U. S. District Judge of Rhode Island. Began practice at Waldoborough, Maine; continued at Warren and Hallowell, Maine, and other places. Justice of the Supreme Judicial Court of Mass., 1815-1850. Member of Hartford Convention, and twice Presidential Elector. Member of Convention of 1820.

²² DEWEY, CHARLES AUGUSTUS. (1793-1866.) Born Williamstown, Mass. United States District Attorney, 1830-1837. Judge Supreme Court Massachusetts, 1837-1866.

²³ METCALF, THERON. (1784-1875.) Author of Law of Contracts and Reporter of Massachusetts Decisions, 1840-1849. A jurist of high repute and a judge of the Supreme Court, 1849-1865.

²⁴ FLETCHER, RICHARD. (1788-1869.) Born Cavendish, Vt. Member Massachusetts Legislature. Congressman, 1837. Judge Supreme Court Massachusetts, 1848-1853.

²⁵ By statute a capital trial in Massachusetts is required to be held before three or more of the Justices of the Supreme Judicial Court.

²⁶ CLIFFORD, JOHN HENRY. (1809-1876.) Born Providence, R. I. Member Massachusetts Legislature, 1835. Attorney General Massachusetts, 1849-1858. Governor of State, 1853. President State Senate, 1862.

²⁷ BEMIS, GEORGE. (1816-1878.) Born Watertown, Mass. Grad-

and seven men were set aside for having formed or expressed an opinion; three for having opinions against capital punishment. Fourteen were peremptorily challenged by the prisoner.

The following jurors were selected: Robert J. Byram (locksmith), *Foreman*; Thomas Barrett (printer), John Borrowscale (slater), James Crosby (clerk), John E. Davenport (painter), Albert Day (merchant), Joseph Eustis (merchant), Daniel T. Fuller (wheelwright), Benjamin H. Greene (bookseller), Arnold Hayward (carpenter), Frederick A. Henderson (furnisher), Stephen A. Stackpole (clerk).³⁰

uated Harvard, 1835. LL. B. (Harvard), 1839. Had obtained a large practice when in 1858 he was threatened with consumption. Most of the rest of his life was spent in Italy and the South of France, where he made a study of the Law of Nations. During and after the Civil War he published four able pamphlets: "Precedents of American Neutrality, in Reply to the Speech of Sir Roundell Palmer, Attorney-General of England, in the British House of Commons, May 13, 1864," "Hasty Recognition of Rebel Belligerency, and Our Right to Complain of It," "American Neutrality: Its Honorable Past, Its Expedient Future," and "Mr. Reverdy Johnson: The Alabama Negotiations." He was a leading member of the Massachusetts Historical Society and the American Academy of Arts and Sciences to both of which he made a handsome bequest. His will also contained a gift to the Boston Athenaeum, a provision for the purchase of Story's statute of President Quincy for Harvard College, and an endowment of a professorship of International Law in Harvard Law School. He died at Nice.

²⁸ MERRICK, PLINY. (1794-1867.) Born Brookfield, Mass. Member State Legislature, 1827. Judge Common Pleas, 1843. Judge Municipal Court, 1844. State Senator, 1850. Judge Supreme Court, 1853-1864.

²⁹ SOHIER, EDWARD DEXTER. (1810-1888.) Graduated Harvard, 1829. Admitted to bar, 1832. He studied law with his father, William Davis Sohier. For many years he was one of the successful and conspicuous leaders of the bar in his practice before the Old Court of Common Pleas. As a jury lawyer he had "few equals and no superior."

³⁰ Mr. Greene (the ninth juror), when asked on his examination as to his opinion, said he was opposed to capital punishment; but did not think that his opinion would interfere with his doing his duty as a juror:—as a legislator, he should be in favor of altering the law, but he believed he could execute it as a juror, as it was.

The Chief Justice said that the state of his opinion was a matter which he must decide for himself; that, as he had stated it, the

The Clerk. John W. Webster: Hold up your right hand. Gentlemen of the Jury: Hearken to an indictment found against the prisoner at the bar by the grand inquest for the body of this county. To this indictment, gentlemen of the jury, the prisoner at the bar has pleaded *Not Guilty*; and for trial has put himself upon the country; which country you are. You are now sworn to try the issue. If he is guilty, you will say so; if he is not guilty, you will say so, and no more. Good men and true! stand together and hearken to your evidence!

THE ATTORNEY-GENERAL'S OPENING.

Mr. Clifford. Gentlemen of the Jury: In entering upon our respective duties in a case so important, I do not design to dwell on the considerations which will naturally suggest themselves for our guidance, least of all that we should keep ourselves free from all excitement which is naturally abroad in the public mind. We are met here in the Temple of Justice, to investigate the simple truth, and we should do it just as in any ordinary cause without regard to consequences. We are here to perform solemn duties, laborious and important, to the country and to the prisoner. This should be enough for us to know. All we can expect to do is to bring the cause to a just decision.

The Grand Jury, on their oaths, have found an indictment against Dr. John W. Webster for the murder of Dr. George

Court did not consider him disqualified. Mr. Greene, after some hesitation, took the oath.

After the other jurors had been sworn, and when the name of Mr. Greene was called to take his seat upon the panel, he stated to the Court that he thought it inconsistent for him to serve as a juror, holding the opinions he did, and should prefer being let off. The Chief Justice remarked that it was a question for him to decide, whether his opinions would prevent him giving an unbiased verdict. Mr. Greene replied that he thought he could give an unbiased judgment; yet he had a sympathy for the prisoner and his family, and feared that his opinions in relation to capital punishment might influence others of the jury. The Court ruled that his case did not come within the statute, and he was not excused.

Parkman. Your duty is simply to hear the evidence, what the prisoner has to say, and what the Court may have to instruct you as to the law and evidence, and say whether the charge is sustained.

As to my own duties in the case, I will say that it is a too common idea in regard to a prosecuting officer, that he is to press a trial with all his zeal and power to produce a conviction. I repudiate and disown the idea. I would not hold the office I do under it. I conceive that I am here to represent the commonwealth, and see that the facts going to sustain her interests under law are duly presented. With this view, I shall confine myself to a simple statement of the evidence, and not pre-occupy your minds with any comments of my own. I shall, in fact, content myself with a mere outline of the evidence in possession of the government, going to establish two propositions:

1. That Dr. George Parkman was murdered.
2. That the deed was done by Dr. John W. Webster.

First, Dr. Parkman, as we shall be able to show, was alive and in good health on Friday, the twenty-third day of November, 1849, and till ten minutes before two o'clock p. m. of that Friday, when he was seen to enter the Medical College in North Grove street, and that he was not seen alive after that time. We shall show that he was a remarkably punctual man, and particularly careful to be present punctually at his meal—that he always apprised his family when he was going to be absent—that he had a sick daughter to whom he was tenderly attached, and whom he was most sedulously attending upon. For the benefit of this daughter he purchased some lettuce, at that season a rare plant. This lettuce he ordered left for himself, probably intending himself to carry it home, while he purchased other articles at the same provision store, and ordered them sent home. But he did not return to that store, or to his family. His family, knowing his habits, soon became alarmed, but no public movement was made till the

next morning. Notices were then put into the evening papers of Saturday, stating the fact of his disappearance.

Rumors were immediately rife of Dr. Parkman having been seen in various parts of the city and vicinity. These rumors were immediately traced to their sources, and proved entirely unfounded. One of these rumors was that Dr. Parkman had been seen in Washington street, as late as five o'clock on Friday, and the friends of that gentleman put so much confidence in it as to mention it in the advertisement. But it proved on further search to be entirely unfounded. The same was the fate of all other rumors, the whole police of the city was employed in the search, aided by munificent rewards, and every rumor of the existence of Dr. Parkman after the hour mentioned—ten minutes before two o'clock on Friday, November 23—turned out to be unfounded, either as to time or identity.

In the course of Sunday, Dr. Parkman's friends first learned from Dr. Webster himself that he had been in his company on Friday, between the hours of one and two o'clock. On this fact I shall have occasion to remark in another connection.

The police has followed out every rumor of the existence of Dr. Parkman, from that time to this, and I shall call your attention to the fact that no person had yet stated that Dr. Parkman had been seen and conversed with after he was seen to enter the Medical College at the time before stated. No pains or expense were spared in the search. Large portions of the river were dredged. On Monday and Tuesday, the Medical College was subjected to a search, but it was a merely formal one, no suspicion having at that time attached to Dr. Webster.

On the thirtieth of November there were found in a privy vault belonging to the Medical College, the lower parts of a body, answering in general appearance to the body of Dr. Parkman, consisting of the pelvis, with the right leg down to the knee, with a number of towels. On the evening after were found in Dr. Webster's furnace, fused in with clay and cinders, certain bones, a certain quantity of gold, and a block

of mineral teeth. On Saturday, were found in a remote part of the laboratory, in a tea-chest, packed in with tan bark and covered with minerals, a thorax, the left thigh to the knee, a hunting knife and a piece of twine around the bone of the thigh.

These bones and remains were all put in the possession of scientific men, and found to correspond with the body of Dr. Parkman, and not to be in any point dissimilar. There were missing the head, arms, and, of course, the hands, both feet, and the right leg, from knee to ankle. In appearance the remains corresponded to the form and age of Dr. Parkman, which was sixty years, and to the height, which was five feet ten inches and a half. Allowing a proper proportion for the parts lost, the parts found corresponded exactly with the height of Dr. Parkman, as proved by his passport. The witnesses will explain how they came to the conclusion as to the height.

Of the bones found in the furnace, it is a remarkable fact that not a fragment duplicates the parts found in the privy or the tea-chest, which shows that, unless there be a miracle in the case, they must have been parts of the same body. We shall also submit some evidence going to show that the bones found in the furnace had been fractured before they were put into the fire; that the block of mineral teeth had rested low in the grate, when it took the cold air, and was not therefore destroyed. Dr. Keep will identify these teeth as a set which he made for Dr. Parkman but a little while before. He knew them so well that he could not have failed to recognize them had he met them in Africa. Dr. Keep also produced a mold, which will be shown you, which corresponds exactly with the fractured jaw which was found in the furnace. It will appear that the mineral teeth must have been put into the furnace with the head. And you will be shown the fractured lower jaw of that head, which exactly corresponds to the mold from which the teeth were made. This is the evidence so far as the Medical College is concerned.

It should, however, be remarked that the thorax showed a

perforation in the region of the heart, some instrument having glanced from one of the ribs and penetrated in the direction of the heart. To these remains there had been an application of strong alkalis, but no injection of the veins with any preservative fluid, as is done for automical purposes. This shows that it could not have been a part of a subject of dissection. And for another reason it could not have been, for all such subjects were strictly accounted for. It will also be shown that the parts of the body had been separated by some person who had a certain amount of anatomical skill.

We come now to the inquiry, was Dr. Parkman murdered by the prisoner? This inquiry will lead us back to the consideration of facts long prior to the disappearance of Dr. Parkman. We shall offer evidence to show the relation existing between the prisoner and Dr. Parkman, and there were pecuniary transactions between them which we shall notice. In 1842, and ever since that period, Dr. Webster has been always embarrassed in his financial affairs, often reduced to great straits, so much so that at the time when these occurrences which we are investigating took place, all the personal property which Dr. Webster had in the world was under the hand of Dr. Parkman.

Dr. Parkman was a large property holder—was accustomed to making loans—and although a liberal man in his donations, was extremely exact in his business matters. He loaned the prisoner, in 1842, the sum of four hundred dollars, and took his note. Things remained in this condition until 1847, when he (Dr. Parkman) made one of a number of gentlemen to lend Dr. Webster money enough to enable him to meet the pressing demands of his creditors; in connection with this transaction, Dr. Parkman took from the prisoner a mortgage of his personal property, including his household furniture, and cabinet of minerals. This mortgage served also to secure the balance due to him on the four hundred dollars he had lent in 1842, that balance being \$456.27. Such was the relation of Dr. Parkman and Dr. Webster, when Dr. Parkman received information that the property mortgaged by Dr. Webster

had been sold to his (Dr. Parkman's) brother-in-law, Robert G. Shaw, while under mortgage to himself.

Dr. Webster had made application to Robert G. Shaw, to raise money on loan, and offering as security these minerals, which were mortgaged already to Dr. Parkman, representing his necessity as being so urgent, that an officer had been about to enter his house and take his household property for debt. Mr. Shaw, having no knowledge of the above transactions with Dr. Parkman, had agreed to advance to Dr. Webster the sum of \$1200, and he did advance it, as I believe, in different amounts.

Dr. Parkman, learning of this conveyance of these minerals by Dr. Webster to his brother-in-law, was of course highly incensed. He regarded it as an act of fraud on the part of the prisoner, and he determined to compel him to pay his debt. The evidence will satisfy you, gentlemen, that from this time he constantly pursued him as a creditor who felt that his confidence had been injured, and regarded himself as fraudulently deceived. It will probably also prove to you, gentlemen, that Dr. Webster had obtained further and further delay from Dr. Parkman, under the promise to pay him when he had received the proceeds of the tickets for his lectures at the Medical College.

Dr. Webster was a professor at Harvard College, and also a lecturer at the Medical College; the compensation for his services there, depended entirely, I understand (I may be mistaken), upon the sales of tickets. The professors of that institution (the Medical College) had made an arrangement with a very respectable person, Mr. Pettit, to act as their collector from the students.

These lectures commenced this last season on the seventeenth day of November. Dr. Parkman, as early and as promptly as the ninth of November, having in view the resolution which he had formed of compelling Dr. Webster to pay his debt, and having yet in his memory the fraudulent proceedings of Dr. Webster, as before mentioned, calls upon him and insists upon the payment of his debt. Dr. Webster requests

him to wait further, under the pretext that he had not received the money for his tickets yet, and induced him, according to his own statement, to make a still further delay.

It will appear, gentlemen, that when Dr. Webster did receive the proceeds of his tickets he gave it to other purposes than the payment of Dr. Parkman's debt. He gave it for the payment of other debts due to his brother professors, Dr. Bigelow and others. Dr. Parkman still pursuing him and not satisfied with his explanations, on the twelfth of November calls on Mr. Pettit, the collecting agent, to ascertain himself in what condition Dr. Webster's affairs might be at that time, and what were the proceeds of the sale of Dr. Webster's tickets.

He calls again on Mr. Pettit on the fourteenth, and then, gentlemen, he threatens a trustee process; he then tells the collector that Dr. Webster is a dishonest and a dishonorable man. On the nineteenth of November, angry, doubtless, he calls upon Dr. Webster again and declares with great decision, almost angrily, that "something must be done about the payment of that debt." On the next morning, the twentieth, Dr. Webster writes him a note, with reference to the same subject. On the twenty-second (Thursday), the day before his disappearance, Dr. Parkman rode out to Cambridge to see Dr. Webster.

These, gentlemen, are the occurrences up to the morning of his disappearance. On that morning, the twenty-third of November, Dr. Webster called at the residence of Dr. Parkman and there made an appointment to meet him at his rooms at half past two o'clock to receive his pay there. He returns himself about nine o'clock that morning to the Medical College and there had an interview with Mr. Pettit, the collector, who, in consequence of what Dr. Parkman had said, was anxious to get out of his hands all money that might have come into them belonging to Dr. Webster. Dr. Webster finds him that morning in the Medical College, and Mr. Pettit there pays him the sum of \$90, which was the balance in his hands, and there informs him of Dr. Parkman's proceedings against

him, threatening a trustee process, etc. Dr. Webster then makes a reply to Mr. Pettit, that he will have no more trouble with Dr. Parkman, because he has settled with him. That \$90, gentlemen, perhaps I may as well state in this connection as any other, from the beginning to the end, Dr. Webster had held out to Dr. Parkman the expectation of receiving. But not one of the amounts which he received on account of these tickets would have begun to pay Dr. Parkman.

This \$90 which he received on the morning of the day when he was to have had an interview with Dr. Parkman at the Medical College, was in his possession the next day, and by him deposited in the Charles River Bank. The check received from Mr. Pettit was deposited by Dr. Webster to his own credit in the Charles River Bank.

I was about to remark that Dr. Webster's lecture days were Tuesday, Wednesday, Thursday and Friday. On Saturday and Monday there were no lectures. After the lecture on Friday there should have been no light or fire in his rooms. But it will appear in evidence that Dr. Webster was in his room late on Friday night, and likewise on Saturday and Sunday nights. The doors were then fastened, though they were never known to be so before. The key of one of the doors was not left in its usual place. On Saturday, which was cleaning day, the janitor went into the professor's back room, which is a room in the rear of his lecture room, to get into the laboratory, but Dr. Webster ordered him to go another way.

I have already said, gentlemen, that Dr. Parkman's friends were making anxious search for him in that region of the city. On Saturday, that day, they had published his disappearance in five papers. It will appear that Dr. Webster took one of these five papers that contained the advertisements.

It will also appear to you, gentlemen, and this is an important fact, that Dr. Webster's relation to some of the members of Dr. Parkman's family, were somewhat peculiarly intimate. The first disclosure which Dr. Webster makes is an interview which took place between him and Dr. Francis Parkman on

the afternoon of Sunday. During that Saturday night, and during that Sunday morning, the Parkman family were in a state of great anxiety and distress. As late as three or four o'clock on the afternoon of Sunday, Dr. Webster made an intimation to Dr. Francis Parkman, the brother of Dr. George Parkman, that the latter had been with him on Friday, and the manner of making the intimation was very striking and made a deep impression on Dr. Francis Parkman at the time. Dr. Webster also stated to the friends of Dr. Parkman that the latter called on him between one and two o'clock, on Friday, to receive his money, and that on being paid, he seized it, and without leaving any evidence of the payments, was about going. On being called, he took a pen, and drawing it across the signature, ran out, passing down two steps at a time, saying that he would see that the bond was canceled. He said he had no recollection about the money paid, except that among the bills was one of one hundred dollars on the New England Bank. The statements which have been made by Dr. Webster to different persons on this subject, are utterly inconsistent with each other, and show all his representations to have been mere fable and fiction.

You will have, further, to consider a variety of facts in regard to Dr. Webster's conduct during the week. You will recollect that was Thanksgiving week. There were no lectures that week, and it was unusual to have fires then; and yet Dr. Webster was there, and had fires of a more intense heat than had been known before. We shall show you that, as early as Tuesday of that week, he had purchased several large fish-hooks, which will be connected by the evidence, to a certain extent, with these remains; that on Friday he purchased three fish-hooks, with which a sort of grapple was made; that around the thigh bone in the tea-chest was a piece of twine of the same description as that attached to the grapple.

I have already adverted to the conduct and deportment of the prisoner during the week—to the fact that his rooms were searched on Monday and Tuesday. The evidence will show

that his rooms were passed through by certain police officers as early as Monday, in a formal manner, without suspicion; that on Tuesday, on being searched by Mr. Kingsley in connection with the police, certain things excited his suspicion. There was a bright fire in the furnace, and Dr. Webster seemed anxious to withdraw attention from the privy and furnace, calling their attention to other parts.

On Monday, Dr. Webster gave directions to the express man to bring certain faggots from Cambridge to his laboratory, and the key not being in its usual place, or to be found, he left them on the outside of the door. It will be seen that Dr. Webster, during that week, was extremely anxious to have it appear that Dr. Parkman had been seen going over to Cambridge. He even tried to induce a lady to say that she had seen Dr. Parkman going to Cambridge. He also went to a mechanic who is very well known in Boston, on Friday, and ordered a large tin box, such as he had never ordered before, to be made strong, and in such a manner that he could solder it himself. As to the uses of this tin box, it will appear that he contradicted himself. There are other facts which go to show that in the progress of the events, mute nature has spoken out in this prisoner, true to herself. His ejaculations when not conscious of being observed, have a deep significance.

On Thursday, on account of suspicions excited in the mind of Mr. Littlefield, the janitor, by Dr. Webster's statement on Sunday, investigations were commenced in regard to the privy under Dr. Webster's room. Littlefield pursued this investigation under direction of Drs. Bigelow and Jackson. He caused his wife to watch the approach of Dr. Webster, but not of any other professors. It is to be remembered that Littlefield was in a situation dependent upon the professors for his living, and particularly upon Dr. Webster. It was after the discovery that Dr. Webster was arrested, and his conduct on that account shows his character, and what dependence is to be placed upon his statements. He charged Littlefield with being a conspirator, and yet he said the remains were no more Dr. Parkman's than they were his. He

also asked Littlefield on Tuesday if he were a Free Mason, and if he had got his Thanksgiving turkey. And on his replying to the latter query in the negative, gave him an order on a provision store for a Thanksgiving turkey, that being the only instance of his ever having made him a present of that sort.

It was certain that the remains, towels, etc., found in the vault must have been put into it through the privy, of which Dr. Webster, the prisoner, had the key in his pocket, as nothing but water could perforate through the wall from the sea. A large bunch of keys filed down to fit any door in the college, were found in Dr. Webster's possession, and his explanation of this circumstance is by no means satisfactory. In his pockets were found papers giving two different accounts of his interview with Dr. Parkman, not reconcilable with each other. His waiver of examination, his injunction to his family to keep secret papers which explained his relation to Dr. Parkman, and the letters shown by an expert to have been written by him to direct suspicion from the Medical College, will all be circumstances to be considered and explained.

Of all these circumstances, Dr. Webster, as he has a perfect right, if he and his counsel think it wise so to do, has ventured no explanation. Neither has he ever once asked, as he might, for the course the government were about to pursue in establishing its charges against him. It is to be hoped, and no one more sincerely hopes it than I, that he will be able to satisfy this jury and the whole civilized world, of his entire innocence. But if he cannot explain these circumstances, they must bear with terrible weight upon him.

This indictment is composed of four counts, though I confess if it had been left to myself I should have preferred to have retained only the last one. Yet perhaps justice could not be secured without including the reference to the stabbing and other marks of violence on the body of Dr. Parkman. There was a perforation in the thorax by some sharp instrument, and there is some evidence in the case, which is somewhat mysterious as it stands, which in the judgment of

the Grand Jury was sufficient to give probability to the conclusion that he came to his death by the stroke of a hammer. A sledge hammer which had been a long time in the building and was seen that very day behind the door of Professor Webster's back room by the janitor, was missed afterwards and has not been seen from that day to this, though the building has been searched for it from cellar to garret.

But even though no means could be shown by which Dr. Parkman was murdered, the jury might be in duty bound to render a verdict that he came to his death by the hand of Dr. Webster. Otherwise what would be the protection to any man of the law under which we live. If the evidence places it beyond a reasonable doubt that Dr. Webster did commit the deed—however committed, he must be convicted. The Court will instruct you under what latitude the prisoner is entitled to the benefit of a doubt.

And, gentlemen, while you will carefully, considerately, and as true men, hearken to the evidence; while you will give to the case that patient and conscientious attention which a just regard for the interests of the commonwealth demands of you; and while you will give to the prisoner the full benefit of every legal presumption, and of every legal doubt which the law accords to him, and the facts may justify:—if, upon this whole case, when we shall have laid it all before you, the conviction shall be impressed upon your minds, that he is legally responsible to the violated justice of the commonwealth, for the murder of an honored and unoffending fellow-citizen, I trust that you will have the firmness to say so by your verdict.

Mr. Clifford moved that the jury be allowed to view the premises where the murder was alleged to have been committed.

Mr. Sohier did not think there was any necessity for this. The government have plans of the Medical College. Perhaps they will be able to furnish a more complete representation of it by

means of a model. After introducing their testimony in part, we shall be better able to judge of the need of further personal observation.

THE CHIEF JUSTICE. There is no doubt of the authority of the Court to grant a view, if they deem one expedient. Views had been granted of late in several

capital cases. I now recollect the instance of Washington Goode's case, tried last year, and of a case of arson, the name of which I cannot call to mind,²⁸ which occurred three or four years before, in this county. The Court will consider the application; and if the progress of the trial seems to develop a necessity for a more immediate and personal inspection of the Medical College, it will be permitted at some time when the Court is not actively engaged; perhaps tomorrow morning, before the opening.²⁹

Mr. Sohler moved that all except the witnesses actually testifying, should be removed from the court room.

Mr. Bemis said that they had

no objections to the course, provided the order were made applicable also to the witnesses for the defense, and that an exception should be made in favor of the medical and scientific witnesses.

The Court ordered that all the witnesses on both sides, except the class last named, should withdraw to an adjoining room till sent for.

The Court intimated, in reply to an inquiry on the part of the prosecution, that witnesses would be expected to be examined to the extent of their knowledge upon all points of inquiry, and should not be examined in part, merely, at one stage, with a view to being recalled to other points, at a subsequent stage.

THE WITNESSES FOR THE COMMONWEALTH.

Charles M. Kingsley. Was agent for Dr. George Parkman, May, 1836, till his decease; had the care of his real estate, and used to see him three or four times a day, always at least once a day. He owned many estates at the west end, comprising the principal part of the neighborhood around the Medical College, and near Blossom street. He was first missed, Friday, November 23rd; called on him, Friday, to get an answer about a lease; did not find him at home, though it was after his

usual time of dining, half-past two. He was very punctual about his habits, and hour of dining; had never been disappointed before in meeting him then; called again, early next morning, and found that he had not returned, and that the family were very anxious. They requested me to make search for him. We concluded not to make a public search, till after the morning trains would generally be in—about two o'clock; was told that he had made an engagement with somebody for

²⁸ The case referred to by the Chief Justice, of the view on the trial for arson, was doubtless that of Edmund Hollihan, December, 1845. Two other views in capital cases, besides those named, have also been granted in this country, within the last two years:—in Joseph Jewell's Case, May, 1848; and in Augustus Dutée's, July, 1848. In all these instances, counsel, or some other representative of each party, attended the jury, by permission of the Court.

²⁹ This was afterwards done on the morning of March 20th.

half-past one; I commenced by finding out who that person was. To trace the doctor from the time of his last leaving his house, at twelve o'clock, Friday, I commenced inquiring of everybody whom I met, who would be likely to know him, when they last saw him; first got trace of him in Bromfield street, at half-past twelve. Then into Washington street, up Williams' Court into Court Square and Massachusetts Block, thence down Cornhill avenue by Joy's building into Washington street again; thence through Water and Devonshire streets to the post-office, then up State through Court street into Green street, down through Eaton street into Vine street, at the corner of Blossom street. There, in Paul Holland's grocery store, learned that he had left a bag of green lettuce the day before; next heard of him in Fruit street, leading from Blossom to Grove street, and then traced him as far as the Medical College.

There was great excitement in the neighborhood. Many of the neighbors, and officer Trenholm assisted in the search. We continued our search till eleven that night; the police were called in to aid about three that afternoon. As many as twelve or fifteen of the neighbors accompanied and aided; the police searched a great many houses in the neighborhood of the college; particularly the cellars and rear apartments of empty tenements.

The first advertisement in newspapers was published Saturday; Sunday we searched the city all forenoon; in the afternoon many persons searched about the new jail lands, and the doctor's vacant houses.

Monday I went over to East Cambridge, and stayed there till about eleven. Then went with Mr. Starkweather, the police officer, to examine the Medical College. We went all over the building, into the lecture and dissecting-rooms, and up into the attic, but not into the cellar; came to Professor Webster's lecture room about half past eleven, after looking over the other apartments; found the door locked, and knocked. After knocking two times he came to the door and unlocked it. Mr. Littlefield told the professor that we had come there to see if we could get any clue to Dr. Parkman; did not hear any reply from Professor Webster, if he made any; went into the lecture room, thence into the back room, and then down into the lower laboratory; made but little examination; didn't move anything in the laboratory; don't know whether Dr. Webster accompanied us down stairs, but think that he did, following us.

Next day, Tuesday, Officers Clapp, Rice and Fuller, accompanied me on another visit to the Medical College in the morning. Mr. Littlefield was with us. We made a thorough search in Mr. Littlefield's part of the building, of every room and the closets.

Then we went up to Dr. Webster's apartments and knocked, as we had done the day before; but he did not keep us so long a-waiting. Mr. Clapp made excuses for calling on him, saying that we had come to the college first, so that we might say, when we went to houses in the neighborhood, that we had been there; said that nothing would be removed; that there was no

suspicion of him; and that we were obliged to come and look into his apartments among the rest. The doctor said we could look 'round if we wished to. We walked through the lecture room into the back room, and Mr. Clapp started to go into the back private room. Professor Webster told him that he kept his valuable and dangerous articles there, and Mr. Clapp just put his head in the door and said he shouldn't go in there to get blown up; then went down into the lower laboratory; went up to the furnace there (the same in which the bones were afterwards found); saw the bright light of a fire, and the ashes underneath all swept up; Professor Webster was talking with Mr. Clapp at this time, at the bench by the window; saw a tea chest there with tan in it, and minerals on top. Clapp inquired, what door is that? Littlefield said it was the doctor's private privy and that he had the key; noticed the stairs into the laboratory were wet, as if water had been spilled; we made no more search, because we had no suspicion of anybody in the college; they rather laughed at me, for my suspicion in regard to the college. Rewards were offered. One for \$3,000, on Monday, or Tuesday, and one for \$1,000, on Wednesday. The handbills were posted very extensively through the city and the neighboring towns. About four o'clock Friday, called at Mr. Littlefield's apartments with Officer Starkweather, and inquired of Mr. Littlefield's wife; in consequence of what she said, I went to the front door and rang the door bell, and Mr. Littlefield

came out with his overalls on, covered with mortar and dirt; had been informed a few minutes before of his having borrowed a bar and tools to dig through a wall, and was determined to find out what he was about; was not at the jail when Professor Webster was brought in from Cambridge, but went down there about ten, in company with S. D. Parker, Dr. Martin Gay, and others; Dr. Webster was in the lower lock-up, lying on the bed with his face downwards; he said he was not able to get up; he was in a state of great agitation and prostration; thought he would not live. They carried him up stairs and he asked for water; held the tumbler to him; he bit at it, struck his face against it, and spilt the water all over him; thought he would fall out of the chair. He wanted word sent to his family, also to Mr. W. H. Prescott, and Mr. Franklin Dexter. Mr. Parker said there was another family that had been in great distress for a week; that, perhaps he could explain certain things at the Medical College, which would relieve that family; that we were going there, and he could accompany us if he saw fit. He said he had nothing to explain and would go with us. The officers helped him into the coach. The party in the coach with Dr. Webster went down to the Medical College. Two of the officers accompanied him, holding him up, one on each side. Inquiry was made for the key. Professor Webster said that Mr. Clapp had taken it from him with other keys. The door was forced. The key for the privy door down stairs was asked for. The professor

said that it hung up on a nail at the end of the shelf. A key was found but it did not fit; Dr. Webster said that someone, then, had taken it away. We went down stairs into the laboratory, and the privy door under the stairs was broken open.

We went from the laboratory out to the trap door. Some of the party went down and handed up parts of a human body—a pelvis, the right thigh and right leg; I think it was the right thigh and right leg. They were placed where Professor Webster could see them, upon a board; did not hear him make any remark about them. He appeared excited, and had to be supported. Dr. Webster was then taken back to the carriage and the jail.

Was at the Medical College, the next afternoon (Saturday) when other parts of the body were found; was in the upper laboratory, when I was called by someone saying that they had made further discoveries; went down and Officer Fuller and others were then drawing a tea chest out into the floor; the thorax and thigh came out imbedded in tan. The thigh was inside of the ribs, put in so that the ends of the ribs had left marks upon it; a large knife fell out of the tan; I should call it a jack-knife. A string went round the body and leg. Those limbs were taken out and washed and put with the others and given into the charge of the officers. Was at the Medical College Sunday afternoon when a pair of slippers and pantaloons, with spots of blood on them, were found in a clothes press at the head of the stairs leading to the laboratory. Dr. Jackson directed they should be kept care-

fully, that Dr. Wyman might examine whether they had blood upon them; they were wrapped up in paper, and Mr. Butman took charge of them. A large knife, with a silver sheath or handle was also found Sunday afternoon, when I was present; was also there when a saw was found, with something on the handle looking like prints of blood.

Was present when the limbs were put together by Dr. Lewis on Monday morning. Appearance of the body was that of Dr. Parkman. He was tall, and very slim; about five feet ten and a half inches high; straight, and small over the hips; was light complexioned; his hair, sandy; his under jaw was prominent. Should not like to say positively that the parts of the body which I saw were Dr. Parkman's.

Cross-examined. The morning after the arrest, searched Professor Webster's house at Cambridge; made a second search there about 12th December. We had a search warrant on the first occasion, but not on the second.

Dr. Parkman would use plain language in talking with people who he thought had dealt dishonestly with him; wouldn't hesitate to tell him so; but never heard him use a profane word or use harsh language in asking for payment of money, when treated with civility.

Patrick McGowan. Was house servant of Dr. George Parkman and now live with Mrs. Parkman; the day of his disappearance somebody called at the house and inquired for the doctor, about 8 or 9 a. m.; didn't know the person, and he didn't

give me his address; should not know the person if I saw him; can't say that it was the prisoner. The doctor was crossing the entry from the breakfast room at the time of the person's calling, and stepped to the door; heard something said about the doctor's meeting the person, or answering the question, if he would meet him at some place, at half-past 1 o'clock; understood the doctor to answer, yes, that he would meet him there; last saw the doctor about 11 o'clock that day; have never seen him since; he was very punctual at meals; never knew him absent from dinner at the regular hour but once, and then he came in before the family had finished.

Cross-examined. The doctor kept no other man servant; other persons called that morning; not many; did not tell any of them that the doctor had gone out of town for the day.

³⁰ *Robert G. Shaw.* Am brother-in-law of the late Dr. George Parkman. He would have been sixty years old in February following his decease. Am well acquainted with prisoner. The first I knew of his lending Dr. Webster money, was when I told him of his having sold me his minerals. The last time I saw Dr. Parkman was on the day of his disappearance. He called at my house between 9 and 10 a. m. and we walked down to State street together. He was in very good health and good spirits. We parted about 10, at the Merchant's Bank. The next day Mrs.

Parkman sent for me; I found her in great distress from the absence of her husband, who had not been home that night; went directly to his brother's, the Rev. Dr. Francis Parkman (also my brother-in-law), and informed him of the doctor's absence; then to Mr. Edward Blake's office in Court street, my nephew, to concert means for making inquiries for him. There was suspicion of a man who had been punished for stealing from the doctor's house; we sent to the attorney who had defended him, and found that that man was away from the city, and had not been in it recently; then went to the city marshal's and engaged him to have inquiries made through the police. That evening an advertisement was inserted in the newspapers, giving notice of the doctor's disappearance. I offered a reward subsequently, of \$3,000, for information in regard to him, and one of \$1,000 for the discovery of his body. During the whole week succeeding, I was consulted and took an active interest in the investigations. Have seen the remains since they were arranged and put together; saw appearances which induced me to believe them to belong to the body of Dr. George Parkman; the color and kind of hair on his breast and leg. He came to my house early one morning—a cold morning—without any surtout; and to my remark that he wasn't dressed warm enough he replied that he had not on even drawers, and

³⁰ SHAW, ROBERT GOULD. (1773-1853.) Born Gouldsbrough, Me. Merchant and Philanthropist.

pulled up his pantaloons to show it; have seen him open his breast in such a way as to show how much it was covered with hair. The form, size and height of the parts corresponded to Dr. Parkman. Saw the teeth which were found; know of his wearing false teeth. I finally took charge of the remains to have them entombed as those of Dr. Parkman, and they were so buried.

As to my financial relations with Dr. Webster, received a note from him about 19th April, 1848, asking for an interview next morning; he informed me of his embarrassments, and that he expected the sheriff would seize his furniture if he couldn't raise a certain sum to pay off a pressing demand which had been long standing; he proposed to sell me a cabinet of minerals; told him that I did not want them. He said I might like to make a donation of them to some institution; that he would sell them to me for \$1,200. I refused; but he pressed me so hard and worked upon my feelings so much that I concluded to aid him; asked him how much he needed, and he said that \$600 would relieve him for the present; told him that if he could get my note discounted for that amount, at some bank which he named, I would buy his minerals. Later he called and said that he could get it discounted at the Charles River Bank; let him have my note, for which I took a receipt, dated April 20th. He shortly after brought me a catalogue, and bill of sale of the minerals, which I put on file, without examining. On 6th June he called on me again, and I gave him a check for \$200; and

again, on 3rd August, one for \$400; for which also I have his receipts. He then said there was some of the minerals included in the catalogue which he should like to keep, if I had no objection; told him that if he would pay the interest as it fell due he could do so. He did not, however, pay it, and I have never called upon him for it.

Subsequently I was walking with Dr. Parkman one day when we met Dr. Webster; asked Dr. Parkman, after we passed, what salary Dr. Webster was receiving at Cambridge. He replied, \$1,200. I said, that is not half enough to support his family, and told him of his application to me for money and of his sale to me of his minerals. Dr. Parkman said, they are not his to sell; I have a mortgage on them, and if you will come to my house I will show it to you. He took me to his house and on comparing his mortgage with my bill of sale, they corresponded throughout. He then said he would see Dr. Webster and give him a piece of his mind; that it was downright fraud, and he ought to be punished. (The mortgage was here produced by the witness and read to the Court and jury. Its condition was for the payment of \$2,432 in four years from date.)

Dr. Webster wrote me a long letter of explanation (as I suppose), which I never read, my eyes being poor, but I laid it away after opening it, and no one else saw it; subsequently I was told that Dr. Webster was proposing to give his minerals to Harvard College, on a certain sum being made up by subscription to enable him to do so. I put my name down for \$500,

on the understanding that so much of my debt should be reckoned as a subscription. The amount was raised and soon after a Mr. Smith called on me from Dr. Webster, and paid me the balance of my debt. I told him to take back the letter and bill of sale, etc., to Dr. Webster, and to tell him that I was perfectly satisfied; know that Dr. Parkman was not paid off by this arrangement.

Dr. Parkman left a wife, a son, and daughter. The daughter has been an invalid for several years; he was always anxious to procure delicacies for her, suitable to her state of health. He was the most punctual man I ever knew; over-punctual. Was also a very domestic man. Nothing would induce him to stay away from home twenty-four hours, if he could avoid it.

Cross-examined. The doctor's punctuality extended to everything; business appointments, as well as others. Had I not known of Dr. Parkman's being missed, should not have supposed that the parts of the body found were his. The fact of his disappearance had as much to do with my opinion as the color of his hair.

March 20.

Francis Tukey. Am city marshal. Saturday, 24th November, at 10 a. m., Mr. E. Blake requested me to have inquiries instituted for him. I sent for police officers and directed them to make inquiry in a private way for Dr. Parkman and to institute such search as they could in his unoccupied houses by pretending an errand about drains, nuisances and the like. At 2 o'clock I had no further information than that he was last seen Friday, in the neighborhood of the Medical College, and the whole police were notified of his absence; advertisements of the disappearance were also given to the newspapers. Could not make a more extensive and particular search than was made for Dr. Parkman both in and out of the city. Messengers were sent in all directions to the towns in the country, and to towns all up and down the sea coast. The river and harbor were dragged; every report that we could hear of him, far or near, we sent and had investigated. We circulated 28,000 hand bills of four different notices, of which the following are copies. (Produced and read to the jury.)

SPECIAL NOTICE.

GEORGE PARKMAN, M. D., a well known and highly respectable citizen of Boston, left his house in Walnut street, to meet an engagement of business, on Friday last, November 23rd, between 12 and 1 o'clock p. m., and was seen in the southerly part of the city, in and near Washington street, in conversation with some persons, at about five o'clock of the afternoon of the same day.

Any person who can give information relative to him, that may lead to his discovery, is earnestly requested to communicate the same, immediately, to the city marshal, for which he shall be liberally rewarded.

Boston, November 25th, 1849.

\$3,000 REWARD.

DR. GEORGE PARKMAN, a well known citizen of Boston, left his residence, No. 8 Walnut street, on Friday last. He is sixty years of age, about five feet, nine inches high; gray hair, thin face, with a scar under his chin; light complexion, and usually walks very fast. He was dressed in a dark frock-coat, dark pantaloons, purple silk vest, with dark figured black stock, and black hat.

As he may have wandered from home in consequence of some sudden aberration of mind, being perfectly well when he left his house; or, as he had with him a large sum of money, he may have been foully dealt with. The above reward will be paid, for information which will lead to his discovery, if alive; or, for the detection and conviction of the perpetrators, if any injury may have been done to him.

A suitable reward will be paid for the discovery of his body.

ROBERT G. SHAW.

Boston, November 26th, 1849.

Information may be given to the city marshal.

\$100 REWARD will be paid for information which will lead to the recovery of a gold double-buttoned lepine turned case-watch, ladies' size, full plate, four-holed jewelled, gold dial, black figures, steel hands, no second hands, no cap.

Marked, F. B. Adams & Sons, St. John street, London. No. 61,351.

FRANCIS TUKEY, City Marshal,
Police Office, City Hall.

Boston, November 27th.

\$1,000 REWARD.

Whereas no satisfactory information has been obtained respecting Dr. George Parkman, since the afternoon of Friday last, and fears are entertained that he has been murdered,—the above reward will be paid for information which leads to the recovery of his body.

ROBERT G. SHAW.

Boston, November 28th, 1849.

Mr. Tukey. The suggestion in the first hand bill, that Dr. Parkman had been seen in Washington street, came from a report which was traced out, and found to be without foundation. Heard of the discovery of the remains on Friday, and went with others to the college. Went into the cellar where we found the remains

as described by other witnesses.

(A model, in wood, capable of being taken apart and intended to exhibit, in a miniature, a fac simile of the interior of the college, as also drawings of the several apartments connected with the case, were exhibited.)

Have had charge of the bones found in the furnace in the lab-

oratory, and also of various other things here produced.

Calvin G. Moore. Reside in this city; saw Dr. Parkman on November 23rd, in Paul Holland's store, corner of Vine and Blossom streets, about ten minutes of two. He made inquiry about purchasing sugar, and also bought some butter. The doctor, after making these purchases, said to me, We cannot find fault with such weather as this and went out.

Martha Moore. I am wife of the last witness; did not see Dr. Parkman in Bridge street Friday, 23rd November; recollect telling my son George on that day to go to school at ten minutes before two. George was standing at the time on the sidewalk. George heard me and said that he would go. George afterwards told me, when we talked the matter over of Dr. Parkman's disappearance, that he saw the doctor, the day that I spoke to him out of the window about going to school.

George F. Moore. I am twelve years old; am son to Mr. and Mrs. Moore, who have just been testifying; knew Dr. George Parkman; last saw him Friday, November 23rd; saw him in Fruit street; was standing alongside of a truck which was stuck in the mud, when he passed by towards Grove street. It was about ten minutes before two when the doctor came by; know, because mother called to me and told what time it was, and told me to go to school. There was a boy standing with me at the time, Dwight Prouty, Jr. I hit him and said, There goes Dr. Parkman. The doctor passed on by the truck, and we went up to school together.

Dwight Prouty. I am thirteen years old; go to school, the Phillips school, with George Moore; knew Dr. Parkman by sight; last saw him Friday, November 23rd, at ten minutes of two; the boy with me, George Moore, said, There goes Dr. Parkman, and I remember noticing him; had often seen him before; am unable to say what dress he wore; the doctor passed close to us, on the same side of the street.

Elias Fuller. I am an iron-founder and carry on the West Boston iron-foundry, on the west side of North Grove street, looking down Fruit street, about seventy-five feet from the front of the Medical College. Knew Dr. George Parkman; last saw him Friday, 23rd November, between one and a half and two o'clock p. m.; was standing on the sidewalk in front of my counting-room, waiting to meet a Mr. Joseph Annin, who had made an appointment to meet me at 2 o'clock; recollect inquiring the time of day of my brother Albert, and his telling me, before I saw Dr. Parkman that it wanted twenty minutes of two. A few minutes after, Dr. Parkman passed, and Mr. Annin called directly after, and I went away with him.

Albert Fuller. Am an iron-founder; brother of the last witness. Known Dr. George Parkman some two years and have had frequent occasions to meet him on business; last saw him November 23rd, Friday; saw him cross North Grove street towards our counting-room, and passed towards the Medical College. He passed within twelve feet and bowed to my brother as he passed. He did not go into the counting-room but towards the

Medical College; when I last saw him he was from forty to fifty feet distant from the college. The time was between half past one and two o'clock; remained at work where I was all the afternoon; did not see the doctor go back again. My position was such that I could have seen him if he had gone out either of the two entrances to the college, by Grove street, or Fruit street place.

Leonard Fuller. Am brother of Albert and Elias, the last witnesses, and work with them in the foundry; recollect the day after Dr. Parkman's disappearance; Mr. Littlefield came that day, after dinner, to borrow an iron bar; let him have it; he came back and wanted a hammer and a chisel; he had his coat off and was sweaty, and his clothes were covered with dirt. My brother Albert handed him a chisel, and I got him a hammer; he took them and went to the college; did not see him again.

Paul Holland. Am a grocer, at the corner of Vine and Blossom streets; saw Dr. George Parkman, Friday, 23rd November. He came into my store in Blossom street and bought thirty-two pounds of crushed sugar and six pounds of butter, which I agreed to send home. He brought in a paper bag. While in the store he had some conversation with someone else, and before going out asked permission to leave the bag for a few minutes, or five minutes, I don't remember which. He gave no directions about the other things, but said he would call for the bag. He never came back; I found on opening the bag that it contained green lettuce. Mr.

Calvin Moore was in the store at the time that Dr. Parkman was.

Cross-examined. Dr. Parkman did not appear to be in a hurry; had on a black frock-coat but no overcoat; his pants were black, and he had on a black cravat, and a black hat.

Jabez Pratt. Am one of the coroners of this county; was called upon by Officer Spurr on the evening of 30th November, to go to the Medical College and see certain remains which had been found; went with him to the house of Samuel D. Parker, the county attorney, and thence, in company with him, Dr. Martin Gay, and others, to the jail in Leverett street; saw Professor Webster in the lock-up under the jail office; had a warrant put into my hands for his arrest; when I went into the lock-up Professor Webster was lying on his face in the berth in very great distress. Dr. Gay desired him to be calm and requested him to get up; he said that he was unable to get up; he was very much agitated and trembled and shook all over; more than any person whom I ever saw; he exclaimed, What will become of my poor family! Two of the officers took hold of him and had to carry him up stairs. He was nearly helpless, so far as the use of his limbs was concerned. He was taken up into the office and seated in a chair. He called for water; but was so agitated that he could not drink. Mr. Parker said to Dr. Webster, There have been some discoveries made at the Medical College and we have come here to see if you are willing to go down and make any explanation of them which you please. Don't

recollect any answer on his part further than that he consented to go.

Mr. Leighton, the clerk of the jail, and I went inside of the carriage with him to the college; Mr. Cummings, the turnkey of the jail, went on the outside; he was very much in the same helpless condition as he had been; we had to help him in and lift his feet in after we had put his body in; noticed his perspiration in the office, though not in the lock-up; remember him complaining of being taken away from his family, and the manner in which it had been done. Arrived at the college, he was taken out and led up the front steps, supported by Leighton and Cummings; we went into his lecture room and into the back upper laboratory. The door leading into this last room had to be broken open; we tried to enter the back private room; found it locked; inquiry was made for the key; and Professor Webster said that that was his private room, where he made his chemical preparations and kept his dangerous chemicals; he said that he hadn't the key, because they had taken all his keys away when they arrested him; the room was broken open; there was a coat lying near the door; Dr. Webster said that was the coat he wore to lecture in; that if they were not careful while they were moving about, they would break some of the bottles and do great mischief; there were some drawers which either stuck or were locked, so that they couldn't be got open. They broke open one or two, and he objected, saying, You will find nothing there but some demijohns and bottles; you will find

nothing there of importance;—and such was the fact.

Some one was supporting Professor Webster by the arms all this time; remember his calling for water in the laboratory, and being so agitated that he could not drink it. He appeared different from anything that I ever saw before; like a mad creature; when the water was put towards him he would snap at it with his teeth, and push it away with great violence, without drinking, as if it were offensive to him.

We crawled out to the back side of the building, on our hands and knees, and there I saw the parts passed out through the hole. They were brought out, and laid upon the floor. The doctor was a good deal agitated, while looking at them. He was taken back to the jail. I stayed behind, at the college; and after the remains were put into a box, and put into the privy, I came away, leaving the college in charge of officers.

Next day, Saturday, I issued a warrant for summoning a jury, for 4 o'clock in the afternoon, at the college. When I arrived there, other parts of the body had also been found. Towards the bottom of the furnace, I found something like a piece of a jaw, with mineral teeth in it, and other single teeth near it. Handed the piece to Dr. Winslow Lewis, Jr. Two or three separate mineral teeth were afterwards found.

Sunday, I sent for Dr. Jeffries Wyman, of Cambridge, to aid in the examination; did not take charge of anything but the bones and the remains; think some of the bones were set into the privy, in a box, with the

other parts of the body, Saturday night, and the door nailed up, as being the safest place to keep them.

Winslow Lewis, Jr.³¹ Am a practising physician in this city. Was called, on Saturday afternoon succeeding Dr. Webster's arrest, to the Medical College, to examine portions of a human body which had been found there; found Dr. Martin Gay and Dr. Charles T. Jackson there; called on Dr. George H. Gay and Dr. James W. Stone, to aid me in the matter; and also advised the co-operation of Professor Jeffries Wyman. We met next day, Sunday, in the morning. It was arranged that Drs. Gay and Jackson should make the necessary chemical investigations; Professor Wyman should take charge of the bones, and the articles supposed to have spots of blood on them; the Drs. Gay, Stone and myself should prepare a detailed report upon the fleshy portions of the body, which we particularly examined. We accordingly drew up such a report and made it in writing, under oath, to the coroner's jury.

(The report was here produced and read to the jury by Mr. Bemis, and explained by Dr. Lewis.)

The head had been separated from the trunk just below what is called the Adam's apple, by sawing through the upper vertebra. The external granulation, or roughness of the spleen showed the application of some chemical agent; and the internal redness that the application had

penetrated to the interior. All the bowels and stomach were gone; should not think that the dissection of the thigh from the hip necessarily evinced the possession of anatomical knowledge on the part of the person dissecting this body, but that a certain degree of anatomical skill would have been requisite to have separated the sternum (or breast bone) from the collar bone. Had known Dr. Parkman for many years. There was nothing in these remains dissimilar from what I should have expected to find in his body. There was nothing in the mode of separation of the parts which indicate that it had been done for anatomical purposes; nor was there anything in the condition of the blood vessels which showed that it had been a subject for dissection. If it had been such a subject, I should have expected to find some of the preserving fluid which anatomists use to inject them with.

Cross-examined. If I had not been told that he was missing, should not have spontaneously conceived the idea that this was his body. There were no peculiar marks that I discovered about the remains. I could not say that the hole in the left side was a stab. It was in the region of the heart; but the muscles and flesh had been much affected by some chemical application; I could not say whether it had been made before or after death; cannot say how long it would take to consume a human head by fire; in such a furnace as that in the laboratory, where the bones were found,—perhaps two

³¹ LEWIS, WINSLOW. (1799-1875.) Born Boston, Mass. Physician, Surgeon, and author of medical works.

hours; this would depend upon the kind, and quantity of fuel used.

James W. Stone. I was one of the examining physicians, associated with Dr. Winslow Lewis, Jr., and signed the report. There was rather more than usual hair upon the back, and of a sandy-gray color. The muscles of the lower extremities were unusually developed; more than one would expect from the general size of the body, and indicated that the person had been accustomed to exercise them a great deal, as in walking. The hair upon the back was longer than usual. In front, on the left side, it was apparently burnt; judging from the skin, hair, and general appearance of the remains, the body was that of a person fifty to sixty years of age. I knew Dr. George Parkman for five or six years, intimately. There was no indications which would conflict with the idea of its being his body; if I had not known that Dr. Parkman was missing should not have suspected that the remains were parts of his body. My conclusion from examining the remains was that the person who separated them must have had some anatomical skill. There was but little appearance of these remains having been parts of a subject for dissection.

Cross-examined. Made a particular examination of the aperture between the ribs, but discovered nothing from which to infer that it was made by a stab during life.

George H. Gay. I signed the report which has just been read, and concur in it, generally; think that the separation of parts of the body, particularly the

sternum from the collar bone and first rib indicate anatomical knowledge on the part of the person who did it. The separation of the head from the body by dissection is difficult, and the saw is often used to get it off, when the mere object is to get rid of it.

Woodbridge Strong. Have been a practicing physician in this city since 1820; have given special attention to anatomy; have had considerable experience in burning up, or getting rid of human remains by fire. In early days in Cornhill had poor accommodations for dissecting, and it was frequently necessary to burn up the remains. Once I had a pirate given me by the United States marshal for dissection and, it being warm weather, I wanted to get rid of the flesh and only preserve the bones. He was a muscular, stout man, and I began upon it one night with a wood fire in a large old-fashioned fire place; built a rousing fire and sat up all night piling on the wood and flesh and had not got it consumed by morning; was afraid of a visit from the police and by 11 o'clock they gave me a call to know what made such a smell in the street; finished it up, however, that forenoon; but consider it no small operation to burn up a body. It needs the right sort of fuel. Wood is better than coal, and the lighter the kind of wood the better; you need frequently to stir the fire up; and you must have something that the flesh will not quench or put out. There is always a difficulty in getting rid of human remains by fire, on account of attracting suspicion by the smell; have been called upon

by my neighbors or the police several times on this account.

Was well acquainted with Dr. George Parkman; for several years was a near neighbor, and used to see him almost daily; last saw him on Friday, the day of his disappearance, at about half-past twelve o'clock in Beacon street; was looking for him for a special purpose and he turned out of the street into the Mall, just before I came near enough to him to speak to him. Was at the Medical College on Tuesday, after the finding of the remains; went for my own gratification and without being expected to be called to testify to my observations; saw on a board the parts of a body which have been spoken of,—a chest, pelvis, two thighs, and one of the legs. The dissection of the chest was made in the usual way of post-mortem examinations; it was done as well as it would usually be done by a physician; and no one who had not been in the habit of seeing dissections, could have done it as it was.

Found on the under side of the sixth rib, exactly under the hole, a clean cut on the ribs. The hole was through the flesh and through the membrane or periosteum of the rib, and made when the parts were tense. After death the elasticity of a body is gone, and it would be very difficult to make a clean cut like this. There was a clean cut through the periosteum, almost into the rib, just such as could not be made upon a dead body without a very sharp knife but which might easily be made upon the living body with a common knife. This struck me at the time as it went very near the heart, as the cause of the death.

Should suppose that a stab in that region would cause internal effusion of blood. In the case of these remains, the parts were unusually bloodless. My inference would be that the person bled to death from violence.

The hair, which I noticed upon the remains, was sandy, intermingled with gray. The skin had lost the appearance of elasticity, as in a young subject, and had the thickness attendant upon age. Judged from the hair, skin and cartilages, that the subject must have been between fifty and sixty years of age. There were ossifications in the cartilages, such as do not commence till after middle life. The body was of an unusual formation. It was narrow across the shoulders, and the difference between the width there and across the hips was much less than is usual. The body was also very straight and the trunk was disproportionately long for the legs. In these respects and in the color of the hair and the general appearance of the skin, it corresponded to Dr. Parkman's body when alive; had often noticed his peculiar formation, and it seemed to me that this was the same.

Cross-examined. Experienced acts of kindness from Dr. Parkman, and had the pleasure of thinking that he was one of my friends; believe he did not wear whiskers; the color of the hair on the body is not always, though usually, the same as on the head; don't think that I ever saw him naked. I am in the habit of noticing the human figure particularly, and observing beauties and deformities of shape.

Never burned up a body in a furnace, but think that the in-

tensity of the heat would be as great in a stove as in the furnace which I saw at Dr. Webster's laboratory. That appeared to me the most inconvenient place for such a purpose. The stove which I saw in the same room, would have answered better. I have used a common cylinder stove, with an anthracite coal fire, to consume human flesh, when dissecting; but do not think that coal is so good a fuel as wood, for that purpose. I have overloaded my fire at times with pieces of flesh, so as to extinguish it, and have been obliged on that account to rekindle it.

Death might ensue immediately from such a wound as I suppose to have occasioned the hole, and the bleeding have been wholly internal. This might follow from the shape of the wound, which might collapse; and also by the sudden stopping of the circulation of the blood, such as would follow the cutting of the aorta.

Frederick S. Ainsworth. Am demonstrator of anatomy at the Medical College. All subjects for dissection pass through my hands before they are given out for the use of students or professors; keep a record of all which are received and which are given out. After Professor Webster's arrest, found that I had on hand all the materials and subjects for dissection which I ought to have. I saw the remains; they had never been brought into my department as a subject for dissection. All subjects brought in for dissection are injected with fluid to pre-

serve them from decomposition—arsenious acid or chloride of zinc. The fluid penetrates all the blood vessels at once; examined the arteries in the remains of Dr. Parkman and saw no appearance of the use of such a fluid. Dr. Webster had no necessary official connection with the anatomical department; saw no indication of the remains having been dissected for anatomical purposes. My impression was that the person who cut them up had no anatomical knowledge. He might have seen a human body cut up; but that he ever had a knife in his hand for the purpose, I very much doubt.

*Charles T. Jackson.*³² Am chemist by profession; have given attention to the science of chemistry and its practical application for many years; was called to the Medical College after the discovery of the remains; went there on Saturday afternoon with the late Dr. Martin Gay, and met Dr. Winslow Lewis, Jr., with whom we made an arrangement for conducting the examination. Dr. Gay and myself undertook the chemical part. There were shown to us parts of a human body and the contents of a small assay furnace about ten inches square. The parts of the body were turned over to the other gentlemen.

Am acquainted with anatomy, having had a medical education; took some notice of the remains; saw no indication of their having been used for anatomical purposes; I thought, also, that they indicated the possession of anatomical knowledge on the

³² JACKSON, CHARLES T. (1805-1880.) Born Plymouth, Mass. A scientist and author, and leader in analytical chemistry.

part of the person who had dissected them. Have heard the report made up on the remains by Dr. Lewis and others, and coincide generally with their conclusions.

Knew Dr. George Parkman very well. He was frequently at my office. He was a tall, slender man of somewhat peculiar figure; rather flat in the chest and broad across the pelvis. At side view he seemed thin, but not so much so in front. I saw nothing in the remains dissimilar from what I should suppose was Dr. Parkman's formation. [The written report of witness's experimental examination, made to the coroner's jury, was here put into the case by consent.]

Was instructed by the Attorney General to take possession of those articles found at the Medical College which were left with Dr. Gay. I refer to the blood vessels, more particularly; satisfied myself that the alkali used upon the body was potash. The action of potash on human flesh is to soften it and ultimately dissolve it; when applied in connection with heat, as by boiling, it dissolves it very rapidly; it might be used in this way precisely as they make soap.

Noticed on the side of the walls on the stair case leading to the lower laboratory, green drops of fluid and spots. They were still liquid and stood out from the wall; got some filtering paper, and Dr. Gay absorbed into the paper from the walls a quantity of this green fluid and carried it away; have examined this paper and find the green fluid to be nitrate of copper.

The quantity of gold I found in the portion of the contents of the furnace, submitted to me

was 173.65 grains. The sheath knife, silver hilt, I recognize as one which I have often seen in Dr. Webster's possession at his rooms at the old Medical College in Mason street; have known the doctor for twenty-five years; attended his lectures when a medical student and have since been in the habit of frequently calling on him; this knife was first shown to me immediately after his arrest and it bore the appearance of having been recently cleaned; I scraped off some of the substance which had apparently been used for that purpose, and found it to be whiting moistened with oil; the furnace in the laboratory would have carried off the odor of burning flesh if any had been consumed there. The draught is a strong one and the soap-stone cover fits tightly over the top.

Cross-examined. It was the nitrate and not any other salt of copper upon the wall; if I had not heard that Dr. Parkman was missing, I should not have been led to suppose that the parts of the body were his. The thorax had not the appearance of having been boiled, but had been singed by fire. It is impossible to tell how long it had been subjected to the potash. The thigh found inside of the thorax had been exposed to the heat of fire and also to the potash. The head of the bone was smoked and the skin softened as if by the joint action of the two.

The time which it would take to dissolve a human body in nitric acid, would depend on the mode in which it was cut up. If the bones were taken out, and the flesh cut into fine pieces I think that with the proper quan-

tity of acid it might be entirely dissolved in half a day so as to become a dense, yellow liquid.

Richard Crossley. Am assistant to Dr. Charles T. Jackson; have given attention to the application of chemistry for thirteen years. Made an experiment on some blood vessels handed to me by Dr. Martin Gay, to ascertain if they had been injected with chloride of zinc, or arsenic acid; and was unable to detect the presence of either substance; coincide with Dr. Jackson that the substance absorbed by the filtering paper kept by Dr. Gay is the nitrate of copper.

Dr. Nathan C. Keep. Have been a surgeon-dentist for thirty years in Boston; live next to Dr. Winslow Lewis, Jr.; have given attention both to artificial and natural teeth; knew Dr. George Parkman as early as 1825 when I was a student of medicine with Dr. John Randall, and he has employed me as his family dentist and called on me himself whenever he needed any assistance or advice in the case of his teeth. (The blocks of teeth taken from the furnace were here exhibited to the witness.) These blocks now shown to me are the same which I made for Dr. Parkman.

Dr. Parkman's mouth was a very peculiar one; so marked in respect to its shape and the relation of the upper and lower jaws that the impression of it on my mind was very distinct. When Dr. Parkman ordered the teeth he inquired how long it would take to prepare them; he said that the Medical College (which was then building) was going to be opened with some inaugural ceremonies and he

expected to be there and to make a speech; he wished to have the set finished by that time, or he did not wish to have them at all; undertook to fulfil the order; the peculiarities of the mouth made it a very difficult case, requiring the exercise of great skill and care; remember very distinctly the particulars of completing the set; more than in ordinary cases. (The witness described at length the making of the teeth.)

I finished the teeth only half an hour before the ceremonies at the Medical College commenced; did not feel certain that all was completed and requested the doctor to call again and show me his teeth; when he called he remarked that he did not feel as if he had room enough for his tongue; to obviate that difficulty I ground the inside of the lower blocks next to the tongue, so as to make more room. The grinding removed the pink color from the gum, and also the enamel from the teeth on the inside and somewhat defaced their beauty. The shape of the space ground out was peculiar, from the size of the wheel which was not larger than a cent.

Saw Dr. Parkman afterwards, occasionally, for the purpose of making such slight alterations or repairs upon his teeth as were needed; the last time was about two weeks previous to his disappearance; having broken a spring, he called upon me late one evening to repair it; I took out his teeth, both upper and lower set, examined them all over to see that every part was right, repaired the spring, and spent half an hour in doing what was necessary. This was my last professional intercourse with him. He called on me, however,

the day before his disappearance and stayed some fifteen minutes, inquiring about a servant that had lived with me; left the city Wednesday following; went to the country to spend Thanksgiving, and returned the Monday after; had heard of the doctor's disappearance before I left. On my return, Dr. Winslow Lewis, Jr., presented to me these three portions of mineral-teeth, saying that he was requested to bring them to me for examination. On looking at them, I recognized them to be the same teeth that I had made for Dr. Parkman. The most perfect portion that remained was that block that belonged to the left lower jaw; recognized the shape and the outline as being identical with the impression left on my mind of those that I had labored on so long. Several of the other portions had been very much injured by fire. I proceeded to look for the models by which these teeth were made. On comparing the most perfect block with the model, the resemblance was so striking that I could no longer have any doubt that they were his.

The presumption is strong that they went into the fire in the head, or with some portion of it, or in some way muffled; mineral-teeth, when worn, imbibe moisture, and if suddenly thrown into the fire, or heated with great rapidity, the outside becomes glazed and the expansive power of the steam which is generated inside explodes them. If put into the fire surrounded by flesh or other muffling substance, on the contrary, the temperature would be raised more gradually

and the moisture would evaporate from them slowly.

Cross-examined. All these teeth came to me at the same time from Dr. Lewis, the Monday after Dr. Webster's arrest. They were in my mind when Dr. Lewis first showed the teeth to me, and I said, Dr. Parkman is gone; we shall see him no more. Recognized them at once, without the moulds, and then went to look for the moulds. This name (of Dr. Parkman on the mould, shown to the jury), was written upon it at the time it was made. They were kept in my cellar where I had put them away; keep my moulds to provide against any accident which may happen to the set of teeth made from them.

Lester Noble. Was an assistant of Dr. Keep's in 1846; am now a student of dentistry in the Baltimore College of Dentists; recollect working upon a set of mineral teeth for Dr. Parkman in the autumn of 1846; the superscription upon the plaster mould shown me, "Dr. Parkman, Oct., 1846."—(the mould produced by Dr. Keep), is in my handwriting; remember writing it.

The teeth shown to me (the same blocks testified to by Dr. Keep) are the same which were shown to me on Monday last, in presence of the counsel for the government, and the city marshal, when the latter delivered them to the former under seal, and the seal was broken by the Attorney General; have had them in my custody since. They struck me at once as the teeth made for Dr. Parkman; find a hole through the block at the same point as we were accustomed to make it; on the inside noticed a

surface which appeared to have been ground; I recollected that that block of Dr. Parkman's had been ground in that way; saw Dr. Keep grind it; the grinding was done after the doctor went to the Medical College opening; have not the slightest doubt that these are the same blocks of teeth which I worked on for Dr. Parkman.

Remember the circumstances accompanying their being ordered. The opening of the Medical College, when President Everett delivered the address, was the time set for the teeth to be done; and as an accident occurred in baking them, we were compelled to sit up nearly all night to finish them. We got them finished just in time to let the doctor go over to the college; went there myself and sat where I could see the doctor and observe, if he had occasion to speak, how well he used them! think the ceremony took place in the early part of November, 1846; have the impression that Dr. Parkman did not speak, but that when complimented for his liberality by Governor Everett, he merely acknowledged it with a bow. He might have said a few words, but I rather think not; understood the compliment to refer to the donation of the land for the college.

*Jeffries Wyman.*³³ Am a professor of anatomy in Harvard College; with other medical or scientific gentlemen, examined the remains found at the Medical College; the duty of making the examination was divided; I had charge of the fragments of

bones found in the furnace, of which I have made a catalogue and detailed description. The box before me contains the fragments of bones found in the college. My attention was not called to the fleshy portions; though I saw them being examined by Dr. Lewis and his associates; have drawn a diagram, exhibiting the position in the skeleton of the bones found, and showing what would be necessary to complete the body, and here produce it; saw no marks of the body having been used as a subject for common dissection; was struck with the fact that the sternum had been taken out, as it would have been, by a physician at an ordinary post mortem examination; also with the mode of the separation of the collar bone from the sternum and first rib. A person without a knowledge of anatomy would not succeed in carrying the knife through so difficult a passage as that between the clavicle, first rib, and the sternum. This is the only way of removal by a knife; the separation of the thighs showed some knowledge of anatomy, since the incisions were made directly towards the joint. My attention was not directed to the separation of the neck from the trunk; have known the saw to be used for that purpose, though it is not customary in common dissections.

Supposed the remains to be those of a person who had passed the middle period of life. The skin was very light; was struck with the quantity of hair on the

³³ WYMAN, JEFFRIES. (1814-1874.) Born Chelmsford, Mass. Physician and Scientist of distinction. Professor of Anatomy, Harvard University, 1847-1874.

back; had not before seen a person with so much; it extended from the shoulder blades half way down the back in each side of the spine; saw nothing inconsistent with the idea that the remains all belonged to one and the same person.

If a person were killed by a blow, and immediately stabbed, there would be a flow of blood, according to the depth of the stab, and the size of the vessels wounded. If the blood were effused internally, it could be removed without difficulty, so as not to leave marks or stains. A post-mortem examination can be made without necessarily spilling blood, if pains are taken to avoid it. They are not infrequently made upon beds without taking pains to remove the linen sheets.

Examined spots on the stair case near the lower landing and which were supposed to be occasioned by blood; they proved, under the microscope to be tobacco-stains. Higher up on the stairs were spots which the chemists present, Drs. Gay and Jackson, supposed to be those of nitrate of copper. On Sunday they were still moist.

Have made experiments in order to determine whether nitrate of copper will destroy blood-stains. The action of the nitrate of copper on the blood discs was not immediate; they were, however destroyed in a few hours; should say that the nitrate of

copper will remove the evidence of blood-discs; and that these last constitute the chief means by which recent blood can be detected by the microscope; saw no spots of blood on other parts of the building.

A pair of slippers and a pair of pantaloons were shown to me for examination satisfied myself that these spots which I examined were spots of blood. The right slipper had the blood on it; and, on the soles of both slippers was a substance resembling Venetian red.

The pantaloons are marked with the name Dr. Webster. I cut pieces from them on which were spots, and these were shown by the microscope to be blood. They must have come upon the pantaloons, laterally, or spattered up, or have fallen from a very short distance above. The only other marks of blood I discovered were a few spots on a piece of white paper said to have been picked up in the private room. Professor Wyman produced his catalogue of the bones and gave an explanation of its details, with the aid of his diagram to facilitate its being understood by the jury. I see nothing inconsistent with the idea that they all belonged to one and the same body.

*Oliver Wendell Holmes.*³⁴ I am Parkman Professor of Anatomy and Physiology, in Harvard University. The professorship was so named in honor of Dr. George

³⁴ HOLMES, OLIVER WENDELL. (1809-1894.) Born Cambridge, Mass. Graduated Harvard. Professor of Anatomy and Physiology, Dartmouth, 1838-1840. Practiced medicine in Boston. Professor of Anatomy and Physiology, Harvard, 1847-1882. Best known as a poet, novelist and essayist, and one of the most brilliant of the American writers of the nineteenth century.

Parkman. At the opening ceremony of the Medical College in November, 1848, I recollect seeing Dr. Parkman and of taking notice of his teeth; thought that he had a set which looked very new, very white, and the upper portion of which were very long.

Am the dean of the medical faculty. Professor Webster lectured four times a week to the medical class, on chemistry, and his laboratory, lecture room and small back room form an independent establishment, entirely separate from that of all the rest of the professors; never knew him to have occasion for the use of subjects for dissection in his department. His lectures were delivered between 12 and 1; mine from 1 to 2.

The fleshy part of the remains showed a knowledge of anatomy on the part of the dissector; should say, generally, that there was no botching about the business; am familiar with the appearance of Dr. Parkman's form; saw nothing about these remains dissimilar from it. A stab in the region of the hole, between the sixth and seventh ribs, would not necessarily occasion a great effusion of blood, externally. It would depend upon the direction of the wound. Remember the day of Dr. Parkman's disappearance. My lecture commenced that day at one; my room is over his; the ceiling of his is very high, and I am never disturbed by noises from it; his rooms are generally vacant when I am lecturing; have often been in my room when Dr. Webster was lecturing in his; have never overheard explosions from his experiments.

Cross-examined. If the stab between the sixth and seventh

ribs were in an upward direction, think that there would be a great internal effusion of blood and a considerable external; have overheard applause proceeding from Dr. Webster's room when I have been in the demonstrator's room, but never in my own. The demonstrator's room is on the same floor with mine but more accessible to sounds from below; cannot say positively that I saw the hair singed or other indications of fire about the body; a mortal blow upon the head would not necessarily be followed by any effusion of blood.

William D. Eaton. Am a police officer; was present when the remains were turned out of the tea chest. Mr. Fuller took the thigh out from the thorax; brushed off some of the tan from the chest and at once saw the hole there, already cut; said to Mr. Fuller that it was about the size of the jack knife which he had found.

Cross-examined. Do not mean the sheath knife, or yatagan; but that which was found in the tea chest; it was shut up but I opened it; put my fingers into the hole; think that it was upon the left side; there were some six of us present at the time. Fuller, Heath, Rice, etc.; took hold and lifted up the thorax, but with no more force than enough to take up a piece of paper; the tea chest was filled up with minerals in papers; I should think that there was more than one tier of them; did not turn the body over myself; saw it turned over; was at the college every day but Friday (the 30th) for many weeks.

Ephraim Littlefield. Am janitor of the Medical College; su-

perintend the building, make the fires and do the sweeping and dusting; have been so employed seven years—four years at the old Mason street college and three years at the new in North Grove street.

Have known Dr. Webster since my first connection with the college; had known Dr. Parkman twenty years; was present at an interview between Dr. Parkman and Dr. Webster on the evening of 19th November in Dr. Webster's back private room. Dr. Parkman came in suddenly; the first words he said were, Dr. Webster, are you ready for me tonight? Dr. Parkman spoke quick and loud. Dr. Webster said, No, I am not ready tonight, doctor. Dr. Parkman said something about Dr. Webster selling something that had been mortgaged before, or of mortgaging it a second time; or something like that. Dr. Webster said, I was not aware of it. Dr. Parkman said, It is so, and you know it. Dr. Webster told him, I will see you tomorrow, doctor. Dr. Parkman stood then near the door; he put his hand up and said, Doctor, something must be accomplished tomorrow. He then went out and it was the last time that I saw him in the building. The next day Dr. Webster asked me if I was busy, or could carry a note to Dr. Parkman; got a boy named John Maxwell to carry it up as quick as he could; he came back and said that he gave it into Dr. Parkman's hands at his house. Dr. Webster on Monday, before Dr. Parkman called, asked me if the vault had ever been fixed where we put the remains from the dissecting and demonstrator's rooms, up stairs; I told him that the vault

had all been covered up with dirt; he asked me how I got down to cover it up; I told him that we took up the brick floor in the dissecting room entry and then cut a hole through the board floor to get down; he asked me if that was all the way to get down under the building; I described to him how the walls ran; he asked me if he could get a light into that vault and I told him no; he said that he wanted to get some gas to try an experiment; I replied, It is a good time now: the tide is in, and will press the gas up; he said that he had apparatus that he could do it with, that when he wanted the gas he would let me know.

On Thursday before Dr. Parkman disappeared Dr. Webster said that he wanted me to get some blood for next day's lecture; as much as a pint; after Dr. Holmes's lecture I went up to his room and saw the student who attends the apothecary shop at the hospital; told him that Dr. Webster wanted to get a pint of blood. He said, I think we shall bleed some one tomorrow morning and I will save the blood.

Friday morning the student said that he could not get any, as they had not bled anybody; went to Dr. Webster's room about half-past eleven o'clock that forenoon and told him that I could not get any blood at the hospital; he said that he was sorry as he wanted to use it at his lecture.

Friday I made the fire in Dr. Webster's back room; saw a sledge hammer there, one which had been left there by the masons when they worked there a year before; it was a mason's

sledge with a handle two feet long and weighing some six or seven pounds; both faces were rounded like an orange cut in halves; its usual place was the laboratory below and I had never seen it anywhere else; took it down stairs into the laboratory and set it up against the box where Dr. Webster makes his gases; have never seen the sledge since; have hunted the building but cannot find it; about a quarter to two saw Dr. Parkman coming towards the college; was walking very fast; I went into Dr. Ware's lecture room, laid down on the settee nearest the front door, waiting for Dr. Holmes's lecture to close to attend to clearing his table; did not hear any one go in or out of Dr. Webster's room; a few minutes of two o'clock went up to Dr. Holmes's room to lock up the doors and help the doctor clear away his table; after I had put away the things in Dr. Holmes's room I came down and locked the outside front door; may have stayed in Dr. Holmes's room fifteen minutes; Dr. Holmes was the last out of the building and I immediately locked the outside front door; went down stairs to clean out the furnaces for the fires next morning; went down stairs to Dr. Webster's laboratory stairs door, that leads out into my cellar to clean out his stoves. There are two doors there, one in the inner and one in the outer partition wall; tried both and found them bolted on the inside; thought that I heard him in there walking; heard the water running; went up stairs through the front entry and tried the door that leads into the lecture room; I put my key into the door to

unlock it; found it unlocked but bolted on the inside; about 4 o'clock Mr. Pettee, messenger of the New England Bank, the collector for the college called; a student named Ridgeway was going out of town early the next morning and Mr. Pettee had come there to fill out the tickets for him for the course of lectures. He filled out all except for Dr. Webster's course and those I had myself; had half a dozen which the professor gave me to sell if anybody wanted to buy them. Mr. Pettee gave me the tickets and went away—six tickets being all that Mr. Ridgeway would need except those for Professor Webster's course; was to take the tickets and get all the money from Mr. Ridgeway.

I don't recollect that I tried his door again that afternoon until late in the evening; my object in trying his doors was to clear his furnace, to clear up his table and to wash up his apparatus.

About half past five heard some one coming down the back stairs that lead from the front entry down into my cellar; it was Dr. Webster; he had a candle stick in his hand and a candle burning; he always used candles; never knew him to use a lamp; he blew the candle out, placing the stick on the settee, and went out of the east passage way through what I call my door, was so near him that he could not help seeing me; that night I went out to a party and got home about 10; went to my kitchen, took a lamp to go and fasten up the building; the first door was Dr. Webster's laboratory stairs door; I found that fast, then started to go into the dissecting room; tried the store

room door leading into the laboratory and found it fastened; went to put out the lights in the dissecting room as the students dissected some times as late as 10 o'clock; saw no lights and no one there; never knew Dr. Webster's rooms locked in this way at night in lecture time before since I have been at the college.

Saturday morning went to the dissecting room and found the outer entry door unbolted; no one had a key to the outside front door except Dr. Leigh, the librarian; no one except him could gain access to the building after I had locked it up at night; tried to get into Dr. Webster's back room on Saturday morning; unlocked his lecture-room door by which he had come out the night before and went down to the door leading to the back room, but found it locked; never had a key to that door; in summer time when the lectures are not held at the college the doctor had been accustomed to come out that door and leave all fastened behind him; but this had not been his practice in lecture time; after finding this door locked I went back to my rooms and soon after Dr. Webster came to the college; he had a small bundle under his arm; followed him up into his room, he unlocking the door; he took his keys and unlocked the door leading from his lecture room to his private room; he said, Mr. Littlefield, make me up a fire in the stove; asked him if he wanted anything else done; he said he did not; then started to go down the stairs that lead into the laboratory; he stopped me and told me to go out the other way; saw Dr. Webster again before 11

o'clock; gave him fifteen dollars in gold half-eagles for Mr. Ridgeway's ticket; the balance of the money which I received from Mr. Ridgeway, eighty-five dollars, I paid over to Mr. Pettee.

Could not get into Dr. Webster's rooms any more the rest of that day, than I could Friday afternoon; Saturday was my sweeping day; tried the doors a number of times; heard some one in the lower laboratory walking and moving round, but could not get in, nor could I tell what the person was doing; heard the water running every time that I passed through the store room; did not see Dr. Webster in the college Sunday, but his doors were fast all the time. About sunset Sunday was talking with Mr. Calhoun, one of the foundry men, about Dr. Parkman—how suddenly he had disappeared, when saw Dr. Webster coming; he said to me, Mr. Littlefield, did you see Dr. Parkman the latter part of last week? I told him that I had. He asked at what time I saw him; I said last Friday, about half-past one; he asked, Where did you see him; I replied, about this spot. He asked which way he was going; I said, He was coming right towards the college; he asked, Where were you when you saw him; told him that I was standing in the front entry looking out of the front door; he had his cane in his hand and he struck it down upon the ground and said, That is the very time that I paid him \$483 and some odd cents; told him that I did not see Dr. Parkman go into the lecture room or out of it, as I went and laid down on the settee in Dr. Ware's room. Dr. Webster said that he counted the money

down to Dr. Parkman on his table; that Dr. Parkman grabbed the money up, without counting it and ran up, fast, two steps at a time, the steps in the lecture room, saying that he would go to Cambridge and discharge the mortgage. Dr. Webster continued: I suppose he did; but I have not been over to the registry of deeds to see. He said further, the first he knew of Dr. Parkman's being missed, he read it in the Transcript; that he was the unknown man that was to meet Dr. Parkman, alluded to in the notice in the Transcript; that he had been to see the Rev. Francis Parkman; he went away, saying nothing more.

Usually, when Dr. Webster talks to me he holds his head up and looks me in the face; this time he held his head down; appeared to be confused and agitated; never saw him so before; saw his face and thought he looked pale. On Monday could not get into Dr. Webster's room to make up his fires; tried twice.

That morning my wife told me that Dr. Samuel Parkman had been there and had gone up to see Dr. Webster; went through the laboratory into the back room and saw Dr. Samuel Parkman and Dr. Webster talking together; they were talking about Dr. George Parkman; heard some conversation about money; heard Dr. Webster say that Dr. George Parkman was very angry; went to the front door and a gentleman who had specs on asked for Dr. Webster; have since ascertained that it was Mr. Parkman Blake; told him that Dr. Webster was in; he said he wanted to see him; took the key to unlock Dr. Webster's lecture room door; found

it unlocked but bolted on the inside; told him that I could not get in that way, but that I would go round the other way by the laboratory stairs; went up stairs and told Dr. Webster that Mr. Blake wanted to see him; he was standing by the table and did not answer at first; he seemed to hesitate, but finally said, You may let him in; unbolted the door and let Mr. Blake in; about half past eleven I went again to the laboratory stairs door but found it fastened. About 12 o'clock on that day (Monday) saw Mr. Kingsley and Mr. Starkweather coming up the steps to the front door. Kingsley says, Mr. Littlefield, we have come to look round the college; we cannot trace Dr. Parkman anywhere but here; offered to show him any part of the building to which I had access myself; saw Dr. Holmes and told him of Mr. Kingsley's request; the doctor told Mr. Kingsley that he didn't suppose that he wished to overhaul the anatomical subjects; Mr. Kingsley replied that he did not; that they only wished to look round in the attics to see if Dr. Parkman had not stowed himself away somewhere there. Dr. Holmes then told me to show them all round; went to Dr. Webster's apartments and found his door bolted and gave three or four raps; Dr. Webster opened the door; just putting his head out; told him that the officers had come to look for Dr. Parkman; don't know that he made any answer; we passed into his lecture room and into his lower laboratory. Messrs. Kingsley and Starkweather looked round a little and then went out by the door leading into my cel-

lar; did not hear the doctor say anything; do not know that he followed us down stairs that day; showed the parties all over the building; do not recollect whether the officers went into my apartments that day or not; Dr. Webster was there; I think that I heard him in the afternoon.

Tuesday morning tried all Dr. Webster's doors in order to make his fires, it being lecture day; could not get in further than the lecture room; about half past nine or ten I unlocked his lecture room door again and found that he was in, with a kind of smoking cap upon his head, and a pair of overalls on; was busy preparing for his lecture at 12; saw that he had a fire in the stove there; asked him if he wanted a fire in his furnace below; he replied, No, that the things which he was going to lecture upon would not stand much heat.

A short time after, saw Mr. Clapp, Mr. Fuller, Mr. Kingsley and Mr. Rice come in; Mr. Clapp said that they wanted to search the college; that they were going to search over every foot of land in the neighborhood; he said, If we search the college first, people round here will not object to our searching their houses; told him that I would show him any place in the college where I had access; Dr. Bigelow told me to show them all over the building; one of the officers said, Let us go into Dr. Webster's apartments.

Led them to the laboratory stairs door and found it fastened—bolted upon the inside; told them that we should have to try another way; went up stairs through the front entry

to Dr. Webster's lecture room door; found it unlocked but bolted on the inside; rapped loud with my knuckles; then pounded with my hand; in a minute or two Dr. Webster unbolted the door and I told him what the officers were there for.

Mr. Clapp went to the door of his little room to which I have had no access; Dr. Webster said, There is where I keep my valuable and dangerous articles. Mr. Clapp did not go in but acted as if he were afraid to. He barely looked in, then we all passed down the laboratory stairs; I went forward and they followed; Dr. Webster came with us; Mr. Clapp went to the privy door; it has a large square glass over it; painted or white-washed about two-thirds over; Mr. Clapp asked, What place is this? I said, That is Dr. Webster's private privy; no one has access there but himself; thought Dr. Webster withdrew the attention of the officers from that place; he went and unbolted the door leading from the laboratory to the front store room and said, Gentlemen, here is another room; saw Mr. Kingsley in the recess of the laboratory where the thorax was found in the tea chest. One of the officers said that they wished to search the vault or dissecting room receptacle; told them that there was nothing there but what I had thrown in myself; that I had the sole charge of it and always kept the key; unlocked the lid and they lowered a glass lantern into the vault and saw that there was nothing there; the officers went all over the building and into the apartments on the same floor with the laboratory; some one asked if there was **any way**

to get under the building; I told them that there was and led them to the trap door leading under the building; we got some lights and the officers had their lanterns; Mr. Rice, Mr. Clapp, Mr. Fuller and myself went down under the building; the rest, except Mr. Fuller and myself, did not go very far; we two crawled across from the front to the back side of the building; nothing was found or seen but the dirt placed there when the building was made; pointed to the wall under Professor Webster's laboratory and told Mr. Fuller that that was the only place that had not been searched; that the only way to get to it was to take up the floor or dig through the wall; they searched my rooms and left; did not get into the doctor's rooms again that forenoon; about 4 was in the front cellar and Dr. Webster came up the front steps and I heard him unlock his lecture-room door and go in; next heard him go down and unbolt the door leading under the laboratory stairs into my cellar; when his bell rang I said to my wife, I guess Dr. Webster has got his door open now, and I can get in.

When I went up into his back room he stood at the side of a table and appeared to be reading a newspaper. He asked me if I knew where Mr. Foster kept; near the Howard Athenæum? I replied that I knew him. He asked me if I had bought my Thanksgiving turkey; told him that I had not, and did not know as I should buy one; he then handed me an order saying, Take that and get a nice turkey, as I am in the habit of giving away two or three, and perhaps I shall want

you to do some odd jobs for me. Thanked him and told him that if I could do anything for him I should be glad; he also gave me another order to Mr. Foster to send him some sweet potatoes; carried both orders to Mr. Foster and picked out the turkey; it was the first time Dr. Webster ever gave me anything.

About 6, fixed myself to go to the Suffolk Lodge of Odd Fellows; heard some one coming down the back stairs; it was Dr. Webster, with a candle burning as before; he blew it out and laid the stick upon the settee; he went out with me and walked along with me through Bridge street; asked him if he wanted any more fires that week, as the lectures closed that day for the week; he said, No, I shall not want any more fires this week. Just before we got to Cambridge street, says he, Mr. Littlefield, are you going down town? I replied, Yes, sir; I am going down to the lodge. Says he, You are a Freemason, aren't you? I told him, Yes, they call me a part of one; we parted, he went towards the bridge and I up Cambridge street; found that the door of the laboratory was bolted after I came back from Mr. Foster's.

Wednesday morning Dr. Webster came to the college early; he went up the back stairs into the front entry; heard him move things round in his laboratory; went to his laboratory door leading from the store room and tried to hear what was going on and to look through the key-hole; but the ketch was over it on the inside and I could not; took my knife and undertook to cut a hole in the door, but it made a cracking and I thought

Dr. Webster heard me and stopped; returned to the store room and laid down on the floor with the left side of my face to the floor, so that I could look under the door; heard a coal-hod move on the bricks in the direction of the privy; I saw him come along with a coal hod; I could see him as high up as his knees; he went along towards the furnace where the bones were found; there were kept bark, charcoal, Cannel and Sydney coal, in the closet near the privy, and anthracite coal in the bin near the furnace.

About 3 o'clock p. m., was passing through the dissecting room entry found the walls hot near where Dr. Webster's laboratory is; so hot I could hardly bear my hand on them; knew it must proceed from the assay furnace where I never made a fire and never knew a fire to be; was afraid that the building would take fire; went to the store room, unlocked the door and went in out of the dissecting room entry; found that the door leading into Dr. Webster's laboratory was bolted on the inside but unlocked; next went to the laboratory stairs door, leading from my cellar and found that fast; then went up stairs, unlocked his lecture room and went in, for the purpose of going down that way; I found the door to the back room locked; went down stairs to look out of my cellar window to see if I could discover fire proceeding from the rear of the building. Not being able to see anything, got out of my back door and climbed on the wall to the double window of the laboratory; found the window unfas-

tened, raised it and went in; the first place I went to was the small furnace in which the bones were found; there was not much fire there; the furnace was covered up with a soap stone cover and the cover and range all covered with minerals; there was a large iron cylinder lying on the top of the range; went to the door leading to the place where the large furnace is and took a broom to try the water in the hogshead; there were two hogsheads of water, in one of which was a copper gasometer; measured one with the broom handle and found that two-thirds of the water was out; did not measure the other which had the gasometer in it, but the gasometer showed that the water was out; they were both full Friday; discovered that about two-thirds of two barrels of pitch-pine kindlings were gone; Friday one of these was full and the other about three-quarters full; observed spots which I had never seen before; put my finger down to them and tasted them and they tasted like acid; in his back private room found the same kind of spots; told my wife about these things; noticed that the Cochituate water was running all the week; I never knew the water to be kept running before this time, except in order to draw it off; did not see Dr. Webster again that day nor on Thursday, the next, which was Thanksgiving; Thursday, tried to get some grape vines and a box which had stood outside of the laboratory door, into the laboratory; there was a bunch of grape vines, an empty box, and a bag of tan, which had lain there outside of the doctor's door since

Monday; had tried to get these things into the laboratory a number of times.

Thanksgiving day I went down to Mr. Hoppin's wharf and got a piece of lime for Dr. Webster, which he asked me for on Tuesday; he wanted a lump as large as my head; have procured it for him every winter.

Thursday afternoon I dug a hole through the walls under Dr. Webster's privy to see if anything was there, and to satisfy myself and the public, because whenever I went out of the college some one would say, Dr. Parkman is in the Medical College and will be found there, if ever found anywhere; never could go out of the building without hearing such remarks; all other parts of the building had been searched and if nothing should be found in the privy I could convince the public that Dr. Parkman had not met with foul play in the college; used a hatchet and a mortising chisel; **worked** an hour and a half but found that I could not make much progress with the tools; got out two courses of brick and then gave up the job for the night; was out that night until 4 o'clock the next morning, at a ball at Coehutuate Hall, given by a division of the Sons of Temperance; there were twenty dances, and I danced eighteen out of the twenty; Friday: while we were at breakfast Dr. Webster came into the kitchen, took up a newspaper and asked, Is there any more news—do you hear anything further of Dr. Parkman? He said that he had just come from Dr. Henchman's apothecary shop; that Dr. Henchman had said that a woman had seen a large bundle

put into a cab, that she had taken the number of the cab, and that they had found the cab all covered with blood; I said, There are so many flying reports about Dr. Parkman that we do not know what to believe. Dr. Webster then went up stairs.

Asked Dr. Henry Bigelow if he knew that there was a suspicion about Dr. Webster; he said that he did; told him that I had commenced digging through the wall, and understood him to say, Go ahead with it; told him all about Dr. Webster's keeping his doors shut from me; I went into the demonstrator's room and there found Dr. J. B. S. Jackson alone at work; I told him that I was digging through the wall and he said, Mr. Littlefield, I feel dreadfully about this; and do you go through that wall before you sleep tonight. He asked me if I found anything what I intended to do. I told him that I should go to Dr. Holmes; said he, You had better not go to him, but go to the elder Dr. Bigelow in Summer street, and then come and tell me; if I am not at home, leave your name on my slate and I shall understand it.

In the afternoon, about 2 o'clock, asked Mr. Leonard Fuller if he would lend me a crowbar; he got it and asked me what I wanted to do with it; told him that I wanted to dig a hole in a brick wall to carry a lead pipe in, to let water pass through; he replied, I guess you do. He said no more and I took the crowbar and left; I spoke jocosely; suppose that he suspected what I was doing; went to the house and locked every door so that Dr. Webster could not get in, nor any one else;

dropped the dead latch of the front door and put my wife to watch the doors, telling her to let no one in unless she saw who it was; told her if Dr. Webster came to the door to give four raps on the floor to warn me; if anybody else came not to disturb me; went under the building and to work; blistered my hands with the crowbar, and finding that I could not make much progress with a crowbar, went to Mr. Fuller and got a cold-chisel and a hammer; went to work again and got along pretty rapidly; got out three and a half courses in length of the bricks; soon I heard a running and a rap four times upon the floor and I came up as soon as I could from under the building; met my wife and she said, I have made a fool of you this time; two gentlemen called here and I thought that one was Dr. Webster, but they are Mr. Kingsley and Mr. Starkweather; they are at the door now. Mr. Kingsley asked me what private place there was that had not been searched; told him, and Mr. Kingsley said, Let us go into his laboratory; told him that it was locked up, and that we could not get in; they then went away; saw Mr. Trenholm, the police officer, and told him what I was doing and that I should get through in twenty minutes or half an hour, and that if he would come back I would tell him the result; as I was going into my shed I met my wife and she said, You have just saved your bacon, as Dr. Webster has just passed in; was talking with Mr. Trenholm when Dr. Webster came out, a little before 4 o'clock; he spoke to both of us; said that an Irishman had of-

fered to change a \$20 bill on the Cambridge side of the bridge to pay his toll of one cent—they thought that it was an extraordinary thing for an Irishman to have a \$20 bill and so they kept it; he said that the marshal had been to him to ascertain if he knew to whom he had paid such a bill, and that he could not be positive as to the matter. Went under the building again, requesting my wife to keep a close watch on the door; took the crowbar and knocked the big-ness of the hole right through; held my light forward and the first thing which I saw was the pelvis of a man and two parts of a leg; the water was running down on these remains from the sink; knew that it was no place for these things; went up and told my wife that I was going down to Dr. Bigelow's, and told her what I had discovered; locked the cellar door and took the key in my pocket so that no one could get down until I returned; went to Dr. Jacob Bigelow's; was not at home; went to Dr. Henry J. Bigelow's, in Chauncey place, and told him what I had discovered; he told me to come along with him to Mr. Robert G. Shaw, Jr.'s, in Summer street; the marshal came in to Mr. Shaw's, and I told him what I had told the others. The marshal told me to go right back to the college and he would soon be there; went to Dr. J. B. S. Jackson's, wrote my name on the slate and then went to the college and got there before any of the other parties; found Mr. Trenholm, and he told me that he had been down and seen the remains; the marshal and Dr. Bigelow got there in ten or fifteen minutes after I got

home; Mr. Clapp came before them, I believe.

Before Dr. Webster was brought down to the college that evening, Mr. Tukey, Mr. Trenholm and myself went into the laboratory and uncovered the furnace; put my hand into the furnace and took out a piece of bone; the party, with Dr. Webster came about eleven o'clock, supported by two persons, one on each side; Dr. Webster spoke to me and said, They have arrested me and have taken me from my family and did not give me a chance to bid them good night.

I unlocked the door of the lecture room and let them in; Dr. Webster was very much agitated; sweat very badly and trembled; did not have the use of his legs; they asked me for the key of his door; told them I did not have it, that Dr. Webster always had it; Dr. Webster said that they had taken him away in such a hurry that he had no chance to take his keys; we forced the doors; they wanted to go into the other private room where the valuables were kept; told them that I never had had a key of it, and Dr. Webster made the same answer as to the key that he did in relation to the other door; was asked where the key of the privy was and I told them that they must ask Dr. Webster, as I never saw the inside of it in my life. Dr. Webster said, There the key hangs upon the nail; Mr. Trenholm tried it and said, This is not the key, it don't fit. Let me see it, said Dr. Webster; I did, and he said, This is the key to my wardrobe, but the other is up there somewhere. They hunted round for it but could not find

it; I understood Dr. Webster to say he did not know where it was. We went down stairs and broke open the privy; when he got into the laboratory he asked for water; got a tumbler and handed some to him; he trembled and snapped at it as a mad dog would; he did not drink any; he got some into his mouth, but it appeared to choke him; someone asked, Where that furnace was, where the bones were; I went to the furnace and uncovered it, taking off all the minerals which were upon the cover; put my hand in and took out a piece of bone which appeared to be the socket of some joint; Mr. Pratt was there; somebody else took out some. Somebody said, Don't disturb the bones; after this we went down under the building and brought the remains up; heard Mr. Samuel D. Parker ask Dr. Gay, If those were the remains of a human body. Dr. Gay said he should think that they were. Dr. Webster appeared to be very much agitated; sweat very badly and the tears and sweat ran down his cheeks as fast as they could drop; Mr. Adams, Mr. Feller, Mr. Rice and Mr. Trenholm were left in charge of the college that night; think that there were four officers; received six lecture tickets from Dr. Webster and sold three at \$15 each. The money for Ridgway's ticket I paid over on Saturday morning. The money for the other two I had paid over previously. Recognize the slippers as Dr. Webster's; I have seen these, or a pair like them for a year or two, about his back room; there was blood on them; think that I never saw the saw until Saturday after Dr. Webster's arrest.

Mr. Bemis exhibited the saw to the jury and showed them some marks on it. He said that *Dr. Wyman* had examined it with the microscope and could not satisfy himself that the marks were blood; but he should submit it to them for what it was worth; it had a red thumb-print on the left side of the handle, where the thumb would naturally press in using it. It was about eight inches long, and is such as is used by joiners for fine work.

Mr. Littlefield. Have seen the jack-knife found in the tea chest, or one exactly like it. *Dr. Webster* showed it to me, the Monday before *Dr. Parkman* disappeared. He said, See what a fine knife I have got. He handed it to me and I examined it. He said that he had got it to cut corks with. I said, I should think that is just what you want, doctor. I noticed at that time the images of the deer and the dogs on the blade; never saw it before that Monday; did not see it afterwards until it was found in the tea chest. The doctor's usual working dress was a pair of cotton overalls and an old coat; the overalls were blue. He had them on the first day the officers came to the college. Never knew the doctor had the keys of any other doors than those of his own rooms and of the dissecting room; knew that a bunch of skeleton keys were found on Saturday, in his little back private room. I knew, also, that towels were found in the privy vault—a diaper roller and two crash towels. There were marks of "W." on the crash towels. The diaper rollers, I had known for two or three years. It was the only one of

that kind that *Dr. Webster* ever had; wiped my hands on it that Friday when I went up and told *Dr. Webster* that I could not get any blood at the hospital; do not recollect whether the roller was marked or not; he had never had any other there; was present when the towels were found on Saturday; they were found in privy vault near the remains; have known no parts of human subjects, of any consequence to be used in *Dr. Webster's* apartments; have got a small piece of human muscle for him, as large as a finger, for the purpose of experiment; never knew him to be engaged in anatomical experiments; have heard noises in his room when firing off pistols by the galvanic battery, or exploding bladders filled with gas; have been in his room when these experiments were performed, and have always helped him perform them.

Cross-examined. On Monday, the 19th, when the interview took place between *Dr. Parkman* and *Dr. Webster*, it was not dark out of doors. The lights were burning. *Dr. Parkman* appeared to be a little riled; somewhat excited. On Friday, the 23rd, when I took the broom to sweep up the doctor's back room, cannot say whether I took it from behind the door or not; saw the sledge there at that time; the sledge was left by masons who did some work for *Dr. Webster* the year before; never searched for it until after *Dr. Webster* was arrested. Generally dine at 1 o'clock—at the time when *Dr. Holmes's* lectures begin; was detained on the 23rd by examining the tickets at *Dr. Holmes's* lecture room door; the students held the tickets in their hands,

showed them and passed in; it took fifteen minutes to take the tickets, as some of the students usually stopped in Dr. Webster's room some little time after the lecture was over, to ask explanations, etc.

On Friday afternoon thought I heard some one walking in the laboratory; the sound might have come from the dissecting room. Was at a ball on Thursday evening, November 22nd, and got home at 1 o'clock; can't say whether I had been in Dr. Webster's rooms other nights that week, after he had left for the night.

Mr. Sohier. Haven't you been in his room playing cards, in the night? I decline answering that question. Haven't you been in the habit of using his rooms for gambling? I decline answering that question; but I can say, I have not seen a card in that room this winter. That does not meet my question; have you not been in the habit of gambling in his room? I decline answering that question; but I will say that I have not played any cards in his room this winter. Did not Dr. Webster discover that you used his rooms for gambling? No, sir; at any rate he never spoke to me about it.

The Coehituate water was kept running all the week; it had not been so before; the doctor objected to having the water run at other times, as it spattered and made the floor wet; began to think over the facts which I have testified to. Sunday night, twenty-fifth, after the conversation with Dr. Webster; told my wife that night that I was going to watch every step he took; had been hunting round that day for Dr. Parkman, in the

empty houses, etc., never thought of the reward then, or that one was offered; never told anyone that I meant to get the reward; never told Dr. Webster so, and I defy any one to prove it. I suspected that Dr. Webster had had something to do with the disappearance of Dr. Parkman; did not know that Dr. Parkman had been in the college until Dr. Webster told me so himself; suspected that Dr. Parkman had been murdered by some one. "That is the very time that I paid him \$483, and some odd cents," were the words of Dr. Webster. He said, "I counted the money down to him on my lecture room table—he grabbed the money up and ran up two steps at a time, as fast as he could.—Dr. Parkman said that he would go and discharge the mortgage; but I have not been over to Cambridge to see. And I never knew that Dr. Parkman had disappeared until I read it in the Transcript; and I am come over to see about it, as I am the unknown gentleman referred to."

Did not see Dr. Webster go into his rooms Tuesday morning; unlocked his lecture room door and found him at work, at half-past nine or ten; passed down to his table and he went towards his back room; saw that he had a fire; asked him if he wanted a fire in his furnace and he said, no, that his lecture for that day had some things about it that would not bear much heat. It was about 11 o'clock when Mr. Kingsley and officers Clapp, etc., called. Dr. Webster let them into the lecture room himself; went down stairs with them, and the doctor went down also; don't recollect

hearing the doctor say a word in the upper room except the remark about his little room—about the dangerous chemicals, etc. After we went down stairs something was said about the whitewashed pane of glass; thought at the time that Dr. Webster tried to lead them away from the privy. When Mr. Clapp asked, What place was that? Dr. Webster started right off to the door, at the front part of the laboratory, into the store room, and said, Here's another room; saw Mr. Kingsley in the laboratory, in the recess, where the minerals and tea chest were; do not recollect seeing anybody examining the minerals; thought that the doctor tried to hurry us out as soon as he could; never got into the doctor's laboratory before by the window; it is the outer door of the two doors by the laboratory stairs which has the bolt on; was mistaken in saying that I did not see the doctor again Tuesday afternoon, after he gave me the order for the turkey; the conversation about my being a freemason was the same afternoon; saw him about six again that afternoon; may have said that it was as late as six, before the coroner's inquest, as I got the day wrong about the order; cannot say now, positively, whether it was before or after six; it was sometime after I had got home with the turkey; am positive that the conversation about my being a freemason was after I received the turkey.

Don't recollect saying before the inquest, That I heard some one in Dr. Webster's rooms about 1 o'clock Wednesday afternoon; did say, That I returned with my wife about 1. Don't

recollect hearing any one there at that time, and don't think that I swore so. Before I went out with my wife that morning, at 9 o'clock, tried to look under the door; saw Dr. Webster when he came in that morning; he had told me the night before that he shouldn't want any fires that week; knew that he always wanted a good fire, being a cold-feeling kind of man, and I thought it strange that he should be in there without a fire, especially as I thought that it was a cold morning. When I got into the laboratory went up to the doctor's back room; thought the spots upon the floor suspicious; noticed spatters on the stairs, more than anywhere else; they were rather red, then; I put my finger down and tasted of them; I thought at that time that the spots were blood and that something had been put on to disguise them; had never seen them there before. On Thanksgiving tried the doors but did not try to get in by the window; did not see Dr. Webster on Thursday; I was about on Thursday; did not take any one in to examine the laboratory. Up to Thursday morning had communicated my suspicions to no one except my wife and Dr. Hanaford and a man named Thompson who worked for me; on Thursday afternoon communicated them to Mrs. Harlow, who lives near the college, and who lent me some tools to break through the wall with; on Friday, told them to Mr. Trenholm and to Drs. Bigelow and Jackson; had no particular signal with the doctor to get into his room; if anybody called I used to knock on the door; I sometimes found the lecture room door bolted; but

seldom; did not knock on Friday; tried the doors and did not think it proper to knock simply for myself; when he was at work never attempted to force my way in.

Saw the advertisement by Mr. Shaw, offering \$3,000 reward, on Monday; took one and carried it down to the college and showed it to Dr. Ainsworth; also saw the \$1,000 handbill; met Trenholm distributing them; saw these handbills stuck up in great numbers about all the college, and the sheds in its vicinity.

Andrix A. Foster. I am a provision dealer in Court street in this city; supplied a turkey to Mr. Littlefield on Dr. Webster's order, on Tuesday, November 27th, between half past three and four o'clock.

Caroline M. Littlefield. Am wife of Mr. Littlefield, janitor of the Medical College; we occupy part of the cellar story. I heard of the disappearance on Sunday, as my husband spoke of it that day; think I heard of it the day before.

Mr. Bemis. Did you caution your husband on Sunday to conceal his suspicions from all persons?

Mr. Sohier objected to this question, as the introduction of testimony dependent upon conversation.

The COURT decided that the fact of the communication of the caution was proper; though accompanying conversation would not be.

Mrs. Littlefield. On Sunday afternoon, after tea, Mr. Littlefield went out, and after a while, came in again and beckoned me to come into the bed room; he said that he thought, just as much as he was standing there,

that Dr. Webster had murdered Dr. Parkman. I told him never to mention it again, or even think of such a thing; for if the professors should get hold of it, it would make trouble for him; noticed nothing particular about Dr. Webster's apartments until after my husband told me his suspicions; I recollected that the laboratory stairs door had been fastened during Friday or Saturday; the first time I ever knew it to be fastened.

Monday forenoon the express man brought a bundle of grapevines, a box, and a bag, and placed them on our cellar floor; he had never left things in our apartments so before; but had always carried them to Dr. Webster's apartments, himself. Asked Mr. Littlefield to put the grapevines into the laboratory; he said he could not, as the doors were all locked up, and he went to the door and shook it, and said, You see I cannot get in. On Wednesday, saw Mr. Littlefield listening and trying to look through the key hole. I saw Dr. Webster pass through our entry Monday, Wednesday, and Friday mornings. Wednesday morning saw him turn to go up the front stairs; not through the laboratory door as usual; Friday morning Dr. Webster came into our kitchen, took up a paper, and said, Mr. Littlefield, have you heard anything of Dr. Parkman? My husband replied, No. I have not, as near as I can recollect. The doctor then went on to say that a woman had seen a large bundle put into a cab; that the number of the cab had been taken; that they had been to see the cab, and that it was all covered with blood. Mr. Littlefield replied, There are a great

many stories flying about; one does not know what to believe; and he then said to me that Dr. Webster knew a great deal more about it than he pretended; this was after the doctor had gone out; knew of Mr. Littlefield's beginning to dig through the wall Thursday and Friday; had to watch the doors, both days to see if Dr. Webster should come along. Friday afternoon thought I saw Dr. Webster through the window, coming; if Dr. Webster came, I was not to let him in until I had struck four times with a hammer which I had. When Mr. Kingsley and Mr. Starkweather went by I thought that it was Dr. Webster and

struck four times and Mr. Littlefield came up; while Mr. Littlefield was out talking with them in the shed, Dr. Webster came to the college, went to the door of the laboratory and unbolted it; heard him unbolt it and take in the grapevines, and then he went away, leaving the door unlocked, as he had usually done before the disappearance of Dr. Parkman. Mr. Littlefield continued talking with the police officers. He then came in and went to digging again, and had not been more than ten minutes under the building before he came up; he seemed to be very much affected, more than I ever saw him before in my life. I said—

Mr. Merrick. We object.

The Attorney General. I think, may it please Your Honors, that it may be a matter of some consequence, in the course of our examination, to show certain facts, which consist partly in appearances and partly in conversations, but which are yet facts, having a material bearing on this issue, and which, as facts, are admissible testimony. If it is intended to be intimated here, under any pretence, that Mr. Littlefield assumed to have found those remains, or anything which implicates him in the crime, it is most material to show what his appearance was when that discovery was first made; what he did, when he came out of that cellar, in reference to this subject-matter, and when he found Dr. Bigelow. These are matters of fact, and not of relation. They are a part of the *res gestæ*; substantially so, at least. Suppose the jury to be satisfied that these remains were those of Dr. Parkman. It appears from this evidence that they must have been there, either with the knowledge of Littlefield or Webster. Now the conduct of Littlefield, at first, is important; and it is proper to be testified to, as much as the language of a person when he comes away from a place in which it is charged that he committed a homicide. Would it not be admissible for him in such a case, if he is to be tried for the offense, to produce testimony as to what he said at first? I see no difference between such a case and the present, where the party is the witness and not the defendant.

Mr. Merrick. We had supposed that precisely this question had arisen and been determined by the Court. Mr. Littlefield was called upon to testify as to what he said, and we have not objected to that. But we object to other conversations designed to corroborate him. The Court sustained us on the last occasion as to excluding conversations between the two; and we can see no difference between the ruling then and that asked for now.

The CHIEF JUSTICE (after conference of the Court). It appears to us that it is competent to show Mr. Littlefield's manner and conduct and appearance; but not to give his conversation.

Mr. Bemis. State, then, what were his manner and appearance when he came up, after discovering the remains.

Mrs. Littlefield. When he came up he appeared very much affected; more than I ever saw him before in my life. He bursted out a-crying, and said—[The witness was checked and told that she must not repeat what he said. I can't say anything else, then, she ejaculated.] Mr. Littlefield shortly after locked up the doors and went away. Mr. Trenholm, the police-officer, came in after Mr. Littlefield went; he asked for Mr. Littlefield, and I told him that he was gone to Dr. Bigelow; unlocked the cellar door with the key of another door and Mr. Trenholm went down; he came up and said there was no mistake—[Witness checked.] Mr. Trenholm remained at the col-

lege until Mr. Littlefield and Mr. Clapp returned; no one else went down while Mr. Littlefield was gone.

John Maxwell. Live in Fruit street place; know Mr. Littlefield; knew Dr. George Parkman; recollect Mr. Littlefield's getting me to take a note to Dr. Parkman the same week that he disappeared; the fore part of the week, and about 12 o'clock in the day; carried the note to Dr. Parkman's house and delivered it into his own hands.

John Hathaway. I am the apothecary and have charge of the medicines at the Massachusetts General Hospital; Mr. Littlefield made application to me for some blood the week before Thanksgiving; was not able to furnish it.

The CHIEF JUSTICE directed the sheriff to swear a sufficient number of officers to take charge of the jury during the adjournment, and three were sworn accordingly. His Honor then addressed the jury, alluding to the necessity of adjourning over for the Sabbath, and for the remainder of the day, for necessary relaxation, and cautioned them against discussion or conversing about the case, as only one part of one side had yet been presented. He then directed the sheriff to provide as well for the wants and comforts of the jury during the interval as the nature of their situation would admit of.³⁵

³⁵ The jury, at their request, and by permission of the Court, were allowed to attend public worship on Sunday, in custody of the officers, precaution being taken by the sheriff to assure himself, through inquiry of the officiating clergyman where the jury wished to attend, of the absence of all allusion to matters connected with the trial, in the religious exercises.

Sarah Buzzell. Am a niece of Mrs. Littlefield; recollect making a visit to them last fall; came on 19th November and went home the 27th; recollect hearing of Dr. Parkman's disappearance,

Friday; heard them talking about it also on Saturday, Sunday and Monday.

Joseph W. Preston. I am a student of medicine; have attended the last course of med-

ical lectures; — Dr. Webster's among others; recollect seeing Dr. Webster, Friday, 23rd, after the lectures were over, about 6 o'clock; saw him about ten or 12 feet from the carriage shed on the east side of the building, and entering the shed; am not able to state whether he entered the college or not.

Cross-examined. It was a circumstance to meet Dr. Webster there that night, so remarkable that I laid it up in my recollection; first mentioned this to Mr. Richardson, a member of the bar; had never seen the doctor there at so late an hour before, after he had lectured. His usual habit was to go away, lecture days, immediately after he had lectured.

William Calhoun. I drive a team for Mr. Fuller, the iron founder; recollect seeing Dr. Webster the Sunday after the disappearance, in front of the college; was with Mr. Littlefield, talking with him; Dr. Webster said to Mr. Littlefield, Did you see anything of Dr. Parkman the latter part of last week? Yes, says Mr. Littlefield, I did. Whereabouts did you see him? About the ground where we now stand, he replied. Which way was the doctor coming? Littlefield answered, He was coming towards the college. Where was you when you saw him? Mr. Littlefield said, Somewhere about the front entry, or front door of the college. He also asked, Did you see him enter the college? Mr. Littlefield said, No, as I went and sat down in one of the rooms. He asked what time it was when he saw Dr. Parkman. Mr. Littlefield answered, It was about half-past one o'clock. The

doctor said that he paid him \$483 on his lecture room table; that Dr. Parkman never stopped to count the money, but grabbed it up, or wrapped it up, and ran away, or went off as fast as he could; and that he told Dr. Parkman that he must go to Cambridge and see if the mortgage was discharged, and everything done up in good shape; and that was the last he saw of him.

Dr. John B. S. Jackson. I am one of the professors at the Medical College; am Professor of Pathological Anatomy; have known Mr. Littlefield seven years; about 1 o'clock of the day of Dr. Webster's arrest, Mr. Littlefield came to my room; informed me that he had already commenced and partially dug through the wall; advised him to go on and finish the opening through the wall; told him that if he made any discovery to go at once and inform Dr. Bigelow, Sr. and call at my rooms in the neighborhood and to leave his name upon my slate if I was not in; enjoined strict secrecy on him; when I came home found his name upon my slate.

George W. Trenholm. Am a police officer; last November my beat was in the district near the Medical College; Knew Mr. Littlefield and Professor Webster. Saw Professor Webster on Sunday afternoon, 25th; was standing in front of the Medical College, in North Grove street, talking with Mr. James H. Blake. Dr. Webster came from towards the front steps toward us; his first remark was that he had read of Dr. Parkman's disappearance in the newspaper the evening before; he said that he thought he would come in and let his friends

know that about that time he paid him \$483, and some odd cents; that Dr. Parkman took the money up and started out of the room without counting it, and told him that he would go to Cambridge and discharge the mortgage; left Dr. Webster and Mr. Blake there together. On Friday was passing by the college about 4 o'clock and met Mr. Littlefield; he told me that he had commenced digging through the wall and of his suspicions of Dr. Webster; said that he had told the officers that every place in the college had been searched except the doctor's private privy, and that he was now going to dig through the wall, to satisfy himself and the public; he took me into the dissecting room entry, told me that the wall had been very hot the day before; so hot that he could not bear his hand on it; put my hand, by his direction, upon the wall, but could not then feel any heat; we went round to the front of the building, and while we stood talking, Dr. Webster came up and said to me, What about that twenty dollar bill? told him that I had not heard anything about it; he said that an Irishman came to the Cambridge bridge and offered a twenty dollar bill to pay one cent toll; the toll man thought that it was strange that an Irishman should have a twenty dollar bill, and he asked him where he got it and he said, From Dr. Webster. Dr. Webster said that the marshal had the bill and had sent for him to identify it, but, said he, I told him that I could not swear to it. The doctor then went off, bidding me good night.

Assisted in taking out the re-

mains. We all went down to get them. Mr. Littlefield and I crawled through the hole; I held the lamp and Mr. Littlefield passed the remains out; about 11 o'clock Professor Webster and his party arrived; some one asked for the key of the privy door and Mr. Littlefield made answer that the doctor had the key, as he always kept it himself; the doctor pointed to a hook, or a nail, and said, that it was up there; I think Mr. Starkweather took the key down and handed it to Mr. Littlefield; he and I went down to the laboratory and the key would not unlock the privy door; I tried the key and told Mr. Littlefield that it was not the key; we went up stairs again and Mr. Littlefield told Professor Webster that that was not the key; don't recollect what Professor Webster replied; the door was then broken open. Dr. Webster appeared differently in the two rooms; more agitated in the laboratory; he snapped at the water given to him.

Cross-examined. Had not heard anything about the twenty dollar bill till Dr. Webster spoke of it; was slightly acquainted with Dr. Webster, he having employed me on some police errands. Mr. Littlefield told me of his suspicions of Dr. Webster on Friday; told me that he wished me not to say anything about his digging through the wall.

Nathaniel D. Swain. Run the Cambridge and Boston express; know Professor Webster; have been in the habit of bringing in and carrying out articles for him; was there Monday, November 26th, and brought in two bundles of fagots, or cuttings of grape vines; took them to Pro-

fessor Webster's house; brought in also an empty box and a bag of tan; the box was about a foot and a half square, like a soap box; took the bag and box from Dr. Webster's house in Cambridge and left them in Mr. Littlefield's cellar; I received directions from Dr. Webster to leave them there, and he said, I will take them into my laboratory myself; had never received any similar instructions before; have been in the business three years next August, and suppose that I have been to the college for him during that time, two hundred times, at least; had always been accustomed to leave articles in the lower laboratory, or else in the upper; if I found the doors locked would take the keys in Mr. Littlefield's kitchen and open them myself. Monday when I left the articles, looked for the keys and tried to open the door; took hold of the laboratory stairs door to set the articles in, but found it fast; I then sat them down by that door, in Mr. Littlefield's cellar and went through the entry to the store room door and found that fast, like the other one; then looked for the keys and could not find them; went again to the Medical College for Dr. Webster on 28th November, Wednesday, and carried two boxes; the largest was about two and a half feet long, one foot deep, and ten inches wide; the other was about one and a half feet square; the small box was full and the other empty; left them in Littlefield's cellar, where I left those on Monday; a piece of the cover of the small box was broken off, one end, and I observed a piece of a small check handkerchief; did not try the door; I saw the other

things there,—the grape vines and the box,—though not the bag of tan; went to the college after the arrest of Professor Webster; I could not find but one box which I could identify, and that was the small one which I took in on Wednesday; the box which had the check handkerchief; it was marked with red chalk, J. W. Webster, Cambridge. I saw the grape vines, but not the other things; the other boxes were made of pine.

Cross-examined. Have seen this clasp knife, or jack knife, before [that found in the tea chest]; saw it on 17th November, last, in Dr. Webster's hands, in his garden at Cambridge; he was trimming his grape vines, and was standing on some steps.

Deastus Clapp. Have been a police officer since 1828. On 5th December was directed by the City Marshal to search the house of Dr. Webster; took Officers Hopkins and Sanderson; the others went up stairs while I remained down; went to search for a particular parcel of papers in Dr. Webster's house, in consequence of directions which were given me; asked Mrs. Webster if she had in her possession any particular parcel or package given her by the defendant; she left the room and presently returned, bringing a bundle of papers; the papers not being articles named in the search warrant, requested Mr. Sanderson to replace in the trunk up stairs where he had found them and to bring the trunk down, which was done; recognized the handwriting of Dr. Parkman on two of the papers, and put my ini-

tials on all of them, for the purpose of identification.

[The notes bearing the witness's initials were produced and

put into the case; the defendant's handwriting being admitted by his counsel. The following are copies of the notes:]

\$400.

Boston, June 22d, 1842.

For value received, I promise to pay George Parkman, or order, the sum of four hundred dollars in fifteen months from this date, with interest, to be paid at the rate of six per centum per annum.

J. W. Webster.

[On the bottom of the note, in pencil marks, admitted to be the handwriting of Dr. Parkman, was the memorandum:]

This is to be given up, on pay't of W.'s note, of Jan'y 22d, '47.

[And on the back of the note were two indorsements, in ink, also admitted to be by Dr. Parkman, of—]

1845, July 10th. In't is act'd to date, by rec't, and seven dolls. of principal, leaving due \$393.

Oct. 10. Seventy-five dolls.

[In another place, on the back of the same note, was an indorsement in pencil, which, Mr. Bemis stated, would be shown to be in the defendant's handwriting, as follows:]

\$483.64, bal. p'd. Nov. 22, '49.

[Across the face of the note were two heavy transverse dashes, each about two inches and a half long, and from an eighth, to a quarter of an inch in breadth. One of these terminated in a collection of hair, or fibrous marks, as if made by an instrument capable of making a number of such marks simultaneously. There was also a single heavy transverse dash across the signature, "J. W. Webster." It was stated that it would be hereafter proved that these dashes, and similar ones on the other note, were not made by a pen, as had been represented by the prisoner.]

[The second note was as follows:]

Boston, Jan'y 22d, 1847. Value rec'd, I promise to pay to Geo. Parkman, or order, twenty-four hundred and thirty-two dollars, within four years from date, with interest yearly: a quarter of said capital sum being to be paid yearly.

J. W. Webster.

\$2432.

Witness, Chas. Cunningham.

[Underneath the body of the note (and on its face) were two memoranda, both admitted to be in Dr. Parkman's handwriting. The first, in pencil, as follows:]

500 of the above is G. P.'s. + 332 = 832. Bal. due Mr. Chas. C.

[The second memorandum (in ink), with the exception of the words and figures after "cancelled," was as follows:]

On pay't to G. Parkman, of eight hundred and thirty-two dollars of this note, and in't, Dr. W.'s other mortgage & note to G. P., of June 22d, 1842, is to be cancelled. (Copy W. has, 831 83½, corrected.)

[Across the face of this note were two heavy dashes, similar to those upon the face of the other note, though still wider. The signature was also dashed out, with a similar heavy dash. The word "paid" was also written twice, transversely, across the face of the note, in ink. The counsel for the defense declining to admit that these latter words were in the prisoner's handwriting, it was stated that they would be shown to be so, hereafter, by the Government's proof. On the back of the note, indorsed in pencil (in what was admitted to be Dr. Parkman's handwriting), was the memorandum]—

7, Nov. 3d, \$17.56, as by rec't.

[Also in ink, and in Dr. Parkman's handwriting, the further memoranda:]

1848, Apl. 18th. Rec'd a hundred and eighty-seven dollars 50-100, by Chas. Cunningham, and gave rec't. G. P.

Nov. 11th. A hundred and eighty-seven dolls. 50-100, by C. C., and gave rec't.

Mr. Clapp. The memoranda him at the Leverett street jail the shown to me came from the prisoner's wallet, when I searched night of his arrest, November 30th.

The first read as follows:

Nov. 9, Friday, rec'd \$510.00
234.10, out Dr. Big.

Petee Cash\$275.90

Dr. P. came to lecture room, front left hand seat,—students stopped—he waited till gone, and came to me and asked for money—Desired him to wait till Friday 23d, as all the tickets were not paid for, but no doubt wd be then—he, good deal excited—went away—and I owed him \$483.64.

Friday 23d, called at his house about 9 a. m.; told him I had the money, and if he wd call soon after one, wd pay him—He called at ½ past, and I paid him, \$483.64 cts.

9th Due Dr. P., who called at lecture, \$483.64, by his act. Desired him to wait until Friday 23d—Angry.

Friday, ½ 1, pd. him; he to clear mortgage.

Note, Feb. 13, 1847, including smaller one, \$2432. (The) \$125

due him on loan, which the large note covers, he agreed to give up tow'd's sale of Min'ls.

Bal. due, 483,64.—

paid, and he gave up two notes—had not the mortgage, but said he wd go and cancel it. Had pd. him 375 by Smith.

125 due

500 the loan.

Rest from other persons.

[On the back of this memorandum, in what was also admitted to be the prisoner's handwriting, in ink:]

Mortgage, 22d June, 1842.

Note, \$400, June 22, '42.

Note, \$2,432, Jan'y 22, '47.

[The second memorandum, in ink, consisted of the following words: ale (ore axe)—jug mol's (molasses?) keys—Tin box—Paint—Soldier.]

483,64.

Mr. Clapp. We received reports through the marshal that Dr. Parkman had been seen in various parts of the city on Saturday, Sunday, Monday and Tuesday; Tuesday I was directed to look over the college, all vacant houses in the neighborhood and the lands about the jail; took Mr. Fuller and Mr. Rice, and went to the college; entered the east front through Mr. Littlefield's apartments; found him there and went in his company to Dr. Webster's apartments; tried a door and found it fastened;—a door to get into the laboratory; we then went up the front entry to the door of Professor Webster's lecture room; Mr. Littlefield said it was the doctor's lecture day, and that it would be but a short time before the lecture would begin; Mr. Littlefield rapped but no one came; he rapped again and in about half a minute Dr. Webster came to the door; informed him that we wished to look over the college; he said that the po-

lice had made a search before, but if we wished to do so, we could; I said to him, We can't believe for a moment, Sir, that it is necessary to search your apartments; he asked us to walk in, and we went down two steps to his table; I inquired when he had seen Dr. Parkman; he said that he saw him there last, on Friday, the 23rd, that he came there by appointment; he also said, on an inquiry from me—how much he paid him that day?—that he paid him \$483; and I don't remember whether any odd cents. He said that he took the money and went up the steps in a hurried manner, and went out of the door, by the way he had come in, and that he had not seen him since; he led us into his back room and pointed out his closets and also opened the little back room and said that that was where he kept his valuable and dangerous articles. We merely looked into the room; did not search—the whole was a mere passing move-

ment through the premises—and then went down to the lower laboratory. We passed round his tables, and apparatus, which were in confusion, but saw nothing to attract attention. We were shown to the passageway, to the dissecting room entry, by the doctor, himself; we went to the stairs and the door where the privy is, and then turned and went back again; do not recollect looking into the privy window; did not expect to find anything at the college at all, and hadn't the most distant idea that there was anything wrong about the professor's apartments; we searched the great vault; held the light down myself; could see well around; we searched every inch of Mr. Littlefield's apartments, drawers, clothing, pockets, male and female clothing, crockery ware, also searched the attics; Friday night, 30th, was called to the college about 6 o'clock; found Mr. Littlefield, Dr. Bigelow, the marshal, and Mr. Trenholm there; went down underneath; I was the first to put the light into the hole where the remains were found; after we took the body out we came up and went into the laboratory; found a pan of sand on the right side of the furnace where the bones were found; saw the furnace, which was covered over with a soap stone cover and minerals; put my hand into the furnace and took out a piece of coal, and found a piece of burnt bone adhering to it; was sent by the marshal to Cambridge; took a coach, and in company with Officers Starkweather and Spurr, went there; we stopped a few rods from Dr. Webster's house; I went ahead, and as I got to the gate met the doctor on the

front steps, showing a gentleman out of his house; I spoke to the doctor before he got into his house and told him that we were about to search the college again that evening and wished him to be present; he went into his library and put on his boots, coat and hat; as we passed out the doctor said, I should like to go back for my keys; told him that it was not necessary as we had keys enough to unlock the college; he said, Very well, and we got into the coach; don't recollect that Dr. Webster said anything as we walked to the carriage; told the driver to go over Cragie's Bridge, through East Cambridge; tried to have a free conversation and a part of the time we conversed about the contemplated railroad to Cambridge; also of the efforts to find the body of Dr. Parkman; told him what distances we had sent; and the stories that had been told, as to his being seen; he said, There is a lady over there (pointing towards the Port), a Mrs. Bent, who knows something about it—suppose, we ride over there; told him that we had better postpone it to some other time; Dr. Webster said that he had called at Dr. Parkman's house about 9 on the morning of the 23rd, requesting the doctor to call at the college betwixt 1 and 2; that the doctor did call; that he paid him \$483, and that Dr. Parkman was to cancel a mortgage; inquired if Dr. Parkman had done so; his answer was that he did not know; then asked him if in case it had not been done and Dr. Parkman was not found, he would be the loser; his answer was that he presumed not.

When we arrived near the

bridge the tide was down; pointed it out to Professor Webster and told him that soundings had been had in all those waters above and below the bridge; told him that a hat had been found at the Navy Yard which was supposed to be Dr. Parkman's; do not recollect that he made any comment; when we got to Brighton street the doctor said that we were going the wrong way; replied that the driver might be green but he would probably find his way to the college in time. We arrived opposite the jail door about eight and a half; got out on the off-side to see if there were any spectators in the jail; there were none and I came out and opened the door on the near side, and said, Gentlemen, I wish you would get out and come into the jail office a few minutes; we all got out and went into the jail office; after we had all got into the outer office I took the lamp and said, Gentlemen, suppose we walk into the inner office; the first one that spoke was Dr. Webster; he turned half round to me and said, What does this mean; said I, Dr. Webster, you recollect that I called your attention at the bridge to soundings having been had, above and below the bridge. We have been sounding in and about the college and have done looking for the body of Dr. Parkman; we shall not look for his body any more, and you are now in custody on a charge of the murder of Dr. Parkman. He articulated half a sentence; I could not understand what it was, and then said, I wish you would send word to my family; recommended to him to have it postponed until the morning; told

him that it would be a sad night spared to them; he seemed inclined to talk to me about the crime which was charged to him and I said to him, Doctor, I think that you had better not talk to me on the subject; he wished me to notify some of his friends in the city; told him that it would not be necessary to do it that night, as he could not see them, and he had better wait until morning; told him that I wished to see if he had any articles about him, improper to carry into the jail; took from him, or he handed to me a gold watch, a wallet (containing the three memoranda, before produced), \$2.40 in money, an omnibus ticket case and five keys. (I produce the keys, one of which, an iron key four or five inches long and somewhat rusty, has a pasteboard label on it marked "Privy.") The privy key had the label on it.

Took all these and tied them up in a handkerchief and carried them to the marshal's office; locked them up in my private drawer, of which I had the only key, and did not see them again until Sunday, about 12. Left Dr. Webster in the custody of Mr. Starkweather and Mr. Spurr, in the back office, while I went into the front room to make out a mittimus, or commitment; requested them not to commit the doctor until they heard from me; and taking Mr. Spurr with me, told Mr. Starkweather to remain with the doctor until I returned; Mr. Spurr went to the marshal's office; Jailer Andrews was not at the jail when we left our prisoner there; we did not find the marshal or Mr. S. D. Parker; we then went down to the college

and found Dr. Webster there in charge of two jail officers; Mr. Parker and the coroner and others were there; also several physicians; first saw the party in the laboratory; they were standing by the sink from whence the Cochituate water runs. Dr. Webster was already down stairs and there was an inquiry for the key to the privy. Mr. Littlefield went and got several but none would fit; did not then know that I had a key in my possession that would unlock the privy; Sunday, found the key marked "Privy," while looking at the articles which I had taken from Professor Webster; went to the college and found this lock [exhibiting one] on a shelf behind the door; put the lock on the privy door, put in a screw and then applied the key and found that it fitted; the attention of the County Attorney was called to the bones in the furnace at that time; soon after I went into the laboratory; found the doctor standing, facing the north side of the building, and trembling as if in a fit; some one put a tumbler to his mouth, but he did not appear to have power to drink; he did not seem to notice any one, or anything that was said to him; he appeared like a person in a fit of delirium tremens, or trembling madness.

The first search of the prisoner's house was made on Saturday morning, December 1st; got Mr. Charles Cunningham to accompany me; we found this bank book in a drawer in the library. [Witness produced a small memorandum book, apparently used for the purpose of keeping the prisoner's account with the Charles River Bank.]

Our search otherwise did not amount to anything; we did not get what we went for; we searched the library very closely, behind the books on the shelves, etc.; we also searched the trunk in which the notes and account were afterwards found, but I saw no papers there like them, then; searched the professor's mineralogical cabinet at the college in Cambridge and his own house again that day, but did not find anything.

Cross-examined. There were other private papers in Dr. Webster's wallet at the time of his arrest; think that Mr. Littlefield tried to open the door by the laboratory stairs when we tried to get into the doctor's apartments on Tuesday; looked into the back private room; things looked tidy and snug there; saw some minerals in the lower laboratory; do not recollect whether there was a fire in the furnace in the lower laboratory, or not; the keys which I have produced were all that I found upon the doctor, or in searching at his house and the college; he said, coming in, that Dr. Parkman was an honest man, and that he did not believe he should suffer any loss if he were never found; the conversation between us was free and easy, as I desired to prevent his suspecting that he was under arrest.

Charles W. Little. Am a student in the senior class at Harvard; knew Dr. George Parkman by sight; recollect meeting him on Thursday, November 22nd, between 1 and 2 p. m., in Cambridge, in the street leading by the Episcopal church to Mount Auburn; between the residence of Mr. William Saunders and the Washington elm,

and about a quarter of a mile or less from Dr. Webster's residence; Dr. Parkman was riding alone in a chaise and he stopped and asked me where Dr. Webster lived; I told him where, and he rode on; upon my return, Sunday morning, heard of his disappearance and recalled the fact of his meeting me.

Seth Pettee. Reside in Dorchester, but do business in Boston; am discount clerk in the New England Bank, and collect funds for the Medical College.

There are seven professors in the faculty; my duty is to dispose of the tickets and receive the money; each professor has his own tickets and receives his own funds; on 7th received 100 of Professor Webster's tickets to dispose of to the students; up to 23rd November had disposed of 55, for which I had received in cash, at \$15 a ticket, \$825; of the balance have sold some for the promissory notes of the students, and some were given away as third course, or free tickets; those sold for notes and the free together, amounted to thirty-eight, and I have seven on hand; out of the promissory notes, taken in payment, Dr. Webster had realized nothing prior to November 23rd, though fifteen dollars had been collected on two half-pay tickets; this sum had gone to pay Dr. Bigelow, for a debt due the faculty; previous to the 23rd the sum of \$825, before named, was all that I had collected for Dr. Webster; do not know how many more tickets than those which I received were sold for his course; the whole number of students attending the lectures was 107; have only known of three instances of tickets being sold for

the doctor's course which did not pass through my hands; one was a ticket for a Mr. Ridgeway, which Mr. Littlefield sold and collected the money for; the course of medical lectures began November 7th; the first payment I made to Dr. Webster was on the 9th; there was then due him \$510; I deducted out of the \$510 the amount of a note due Dr. Bigelow, \$234.10, which Dr. Bigelow had given me to collect; and paid over to Dr. Webster the balance, \$275.90, in a check. This check which I now produce, paid, bears date November 9th; the next division was November 14th, credited Dr. Webster on my account at that time with 13 tickets, amounting to \$195, and paid him by a check; the next division was on November 16th, \$30; I paid him with a check to Mr. Littlefield on an order from Dr. Webster; on 23rd I credited him with \$90, the price of six tickets; for this I drew a check for \$90, and handed it to him personally at the Medical College on the morning of that day; have paid him nothing since; the first time that I ever saw Dr. George Parkman was on November 12th, last; he came to the bank and inquired of me whether I collected the funds of the Medical College and if I had any of Dr. Webster's funds in my hands; I replied that I had paid over to Dr. Webster all the funds I had in my hands a few days before; he left the bank and in fifteen minutes returned and received a dividend belonging to his wife which I paid to him; as he was signing a receipt I inquired of him if Dr. Webster owed him and he said, I should think that you might judge so from my manner; a few days

after this, the same day that I paid Dr. Webster \$195, he called again and asked as before, if I had any funds belonging to Dr. Webster; told him that I had not, as I had just paid them over; he said that he thought he had given me a hint to retain the funds for him, or something of that sort; told him that I had no control, whatever, over the professors' funds; that my duty was merely to collect them and pay them over. He said that I should have been doing justice to himself and Dr. Webster, and all concerned if I had retained the funds for him; and that now he should be obliged to distress Dr. Webster and his family; suppose that he meant that he should be obliged to commence a suit; seemed to blame me for not retaining these funds; he then said that Dr. Webster was not an honorable, an honest, or an upright man, and added, And do you tell Professor Webster so, from me. Never saw Dr. Parkman again.

On morning of 23rd November went to the college to pay Professor Webster the \$90; took a notice from notice box (a notice to the students when I would be in attendance to deliver the tickets), which I wished to alter so as to change the day of attendance from Thursday to Saturday; Mr. Littlefield gave me the keys to the library, which I unlocked and passed through to the private room in the rear of Professor Ware's lecture room; altered the notice and returned, and then passed down the stairs, through Mr. Littlefield's cellar, by the laboratory stairs, to Dr. Webster's laboratory; the door was not locked; found Dr. Webster in; excused myself for com-

ing in at that time in the morning; told him that Dr. Parkman had called on me several times and inquired if I had any funds of his in my possession, and as I did not wish to have any of his funds trusted in my hands, or any trouble with Dr. Parkman, I had come to pay them over to him. Professor Webster said, Dr. Parkman is a peculiar sort of a man; rather nervous, and has been sometimes subject to an aberration of mind; so much so that he was obliged to, or did, put his business out of his hands, and Mr. Blake, a relative, attended to it for him; he said, You will have no further trouble with Dr. Parkman, for I have settled with him; there was no further conversation and I went away, first paying him the \$90, in a check on the Freeman's Bank, drawn by myself.

Went to the college in the afternoon of the same day, Friday, sometime between 4 and 5 o'clock; met Mr. Littlefield at the door; he had sent for me; he was dressed as usual, but came in his stocking-feet, without shoes; he said that he wanted to see me to fill up a set of tickets for a student who was going to leave in the morning—P. R. Ridgeway. Filled up the tickets and Mr. Littlefield told me that he would give me the money for them on the next day, when I called; called at the college the next day, Saturday, not far from 3 p. m.; saw Mr. Littlefield; he was sitting at a table in Professor Ware's lecture room.

When I had the interview with Dr. Parkman can't say that he used any profane language; when I told him that I had paid over the funds to Dr. Webster,

he said, The devil you have, or something like that; his language was hard or harsh, but I do not know that it was coupled with a profane expression, when he sent the message to Dr. Webster about his being a dishonorable man; when I talked to Dr. Webster, I mentioned to him Dr. Parkman's making inquiries about his funds, but did not the message about his being a dishonest, or dishonorable man.

Cross-examined. Have no means of knowing how many tickets Dr. Webster himself sold; I have no record of any others than those that I sold myself, and those were 97; presume that the bills paid out by the teller of the New England Bank were New England Bank bills; he pays out no others; had no other business with Dr. Webster on Friday morning, except in relation to the tickets.

John B. Dana. Am cashier of the Charles River Bank, at Cambridge; have known prisoner twenty years; he kept a bank account at our bank; Dr. Webster deposited on November 10th, \$275.90, in a check on the Freeman's Bank; November 15th, \$150 in bills; November 24th, \$90, in a check on the Freeman's Bank; on November 23rd there was a balance due Dr. Webster of \$139.16; on November 1st, the balance due him was \$4.26; he deposited the 10th, \$275.90. Up to the 22nd, the amount of his drafts was \$291; on December 1st, he drew a check for \$93.75, which was paid to Mr. White; the next check was for \$5, on the 3rd; the next check, the same day, for \$10; the next check for \$19, on the same day. At that time the doctor's balance was \$68.78, when a trustee

process was served. The balance was paid on December 21st, on a check of Dr. Webster, in favor of the party who had trusted; Mr. Richardson, a coal dealer.

Daniel Henchman. Am a druggist in Cambridge street; know defendant; on 23rd November, about 10, he asked me if I could give him bills for a check for ten dollars; I gave him one or more bills for his check on the Charles River Bank; the check was not paid, for want of funds.

James H. Blake. Am nephew of the late Dr. George Parkman; took part in the search which was made for him; on Sunday afternoon, 25th, about 3 o'clock, when near the college, and while talking with a police officer, Dr. Webster came up towards me from the direction of the college; he had no overcoat on; it had been raining, with a cold easterly wind; he took me by the hand, and said that he had seen in the Transcript of the evening previous that Dr. Parkman was missing. He said that he had come in on purpose to notify the family that he was the gentleman who went to Dr. Parkman's house on Friday morning and made the arrangement to meet Dr. Parkman at the college at half past one that day; he said that Dr. Parkman met him at the hour appointed; that he paid him the amount of a note, \$483, or some such amount; he said that he kept the note; that Dr. Parkman left, and said that he would go to East Cambridge and discharge the mortgage; Dr. Webster added, We all know Dr. Parkman to be an honest man, and I trusted him with it. These were his very words; I inferred from

them that Dr. Parkman had the mortgage deed with him. He said that he should go up and see Rev. Dr. Francis Parkman; that he had been to church in the morning, and he thought that he would wait until after dinner, before he came into town; after the conversation he went into the college.

*Rev. Francis Parkman.*³⁶ Am a brother of the late Dr. George Parkman; have known Dr. Webster a great many years; was his pastor for several years; was called to perform pastoral offices in his house within two months of my brother's disappearance; to baptize his grandchild, the last Thursday in September; the child of his daughter and son-in-law, who reside at Fayal.

Sunday after the disappearance of my brother, we were in great perplexity and distress. None of us went to church that day; I passed the morning with my brother's family; in the afternoon Dr. Webster came to my house; on entering the room, without customary salutations, he said, I come to tell you that I saw your brother at half past one o'clock on Friday, and paid him some money. It was then said, by Mrs. Parkman, or myself, Then you are the gentleman who called at George's house at half-past nine o'clock on Friday morning, and made the appointment? He answered that he was and that he should have come and told us so before, but that he had not seen the notice of his disappearance until Saturday evening, and he had waited until now, thinking the family

might be at church. I said, Dr. Webster, we are very glad to see you, as it is a relief to us to know who called at my brother's on Friday to make the appointment; we feared that some one who meant him ill had called and had beguiled him over to East Cambridge. Dr. Webster said, I was the person, and your brother came to the college at half-past one, p. m., and I paid him \$48.3 and some odd cents; I asked him if he was perfectly certain about the hour, to which he answered, I am quite certain; I finished my lecture at 1 o'clock and I waited twenty or thirty minutes or so for your brother. I asked him if he had a bundle of papers in his hands; as some person who saw him at quarter past one o'clock said that they saw him with papers in his hands. To this he replied, He had papers, and he took out one and dashed his pen through it, so (making a motion with his hand, as if to imitate a sudden and rapid dash). Dr. Webster went on to say, I told Dr. Parkman that he hadn't discharged the mortgage; he replied, I will see to that; I will see to that. Dr. Webster said my brother went out very rapidly from the room in the college, where the interview took place. Dr. Webster's manner was hasty—nervous. He commenced speaking in a business manner immediately upon entering the room; could not but remark there was no expression of surprise at the mysterious disappearance, and no expression of sympathy with our distress. What particularly struck me

³⁶ PARKMAN, FRANCIS. (1788-1852.) Born Boston, Mass. Unitarian clergyman and author.

was the absence of that expression, or tone of sympathy in which it is natural for those approaching persons in affliction to speak. Dr. Webster was not there more than ten or fifteen minutes. My brother's domestic habits were remarkable; he was among the most punctual of mankind; almost always at home, seldom, or never, out of town, and almost invariably at his regular meals; if likely to be detained he would take pains to send and notify his family of it, even for very short absences. He has left a wife, a son, and a daughter; his daughter has been a great invalid, and was one for whom he was perpetually anxious; his son was in Europe, when he disappeared, but has lately returned; believe I may say, with confidence, that I never knew my brother to use profane language; when he was moved (though he was not an irritable man), he would use strong language; but never, on any occasion, do I recollect of hearing him utter a profane word.

March 26.

Ralph Smith. Reside here; am engaged in mercantile business in Exchange street. Professor Webster owing me a small amount, last fall, wrote him to the effect, and he replied that he would call and pay the bill on receiving the fees from the medical students.

Samuel B. Fuller. Am a police officer. Went to East Cambridge, to the registry of deeds on 25th November to see if the mortgage was canceled, and was told I could ascertain better by asking Dr. Webster; went to his house about dark, and found him at

home. Dr. Webster went to an account book, turned over the leaves two or three times, and appeared to tremble badly; he left the room; soon returned and said, It is strange; I can't find those papers. He said, My ticket man told me that Dr. Parkman came to him and demanded what money he had in his possession for the tickets he had sold; he refused to let him have the money, and Dr. Parkman told him that I was a d—d rascal, and a scoundrel; I thought hard of it at the time, but I don't care about it now, as I have settled with Dr. Parkman, and it is all over; said the mortgage was on personal property, and not on real estate.

On Tuesday forenoon I accompanied officers Clapp and Rice, and Mr. Kingsley, in the search of the doctor's apartments, as described by them. I asked Dr. Webster who was with him when Dr. Parkman paid him this money? He said, No one but myself. I asked at what hour Dr. Parkman was there when he paid the money. He said, Between half-past one and two o'clock. I am the officer who discovered the remains in the tea chest; had been searching all Saturday; after getting out the minerals I found that there was tan in the chest; ran my hand into the tan and took out a hunting knife; took the chest and turned it over, when the trunk of a human body tumbled out, with one of the thighs placed inside of it; the thigh being tied round with a piece of twine at one end; saw a hole in the left breast, just under the left nipple. Found one of the kidneys in the ash hole, on Sunday; in the lower laboratory on

the table were found a comforter and two woolen blankets, done up in a newspaper.

S. Parkman Blake. I am a nephew of late Dr. George Parkman. I took a very active part in the search for him; called on Dr. Webster at the Medical College on Monday morning after his disappearance, between 10 and 11. Mr. Littlefield said that he did not lecture that day and that he believed he was then in. He tried the door of the lecture room; it was fastened; Mr. Littlefield asked my name and said that he would go round the back way and give my name to Dr. Webster; and he went down the stairs from the front entry; after waiting an unreasonable time he unbolted the front door of the lecture room, passed out, and I went in.

Saw Dr. Webster coming out of his back private room in a smoking cap and working dress. Told him that I had learned that he had an interview with Dr. Parkman, and that I had come to learn all the particulars of that interview. Dr. Webster then said that on the Tuesday preceding Dr. Parkman's disappearance, November 20th, the doctor had called there, before his lecture was finished; that he sat down and waited for the lecture to close. (Dr. Webster pointed out the seat he occupied.) After the lecture was finished (he went on), Dr. Parkman came up to the table and said, Doctor, I want some money today—he was very much excited and very angry—you have \$500 in your pocket and I want some of it; his own countenance lighted up and expressed great anger while relating the interview; Dr. Webster said that he

told Dr. Parkman that he could not pay him that day, as he had not collected all the money for his tickets. Then Dr. Parkman asked him when he would pay him, and he said, On Friday. That, Dr. Parkman then went out. Dr. Webster said that on Friday, 23rd November, on coming into the city, he had called at Dr. Parkman's house; that he saw him at the door and told him if he would come to the lecture room on that day, after lecture, that he would settle with him; and that he did come about half-past one; said that his lecture had been finished and three of the students had stopped after the lecture to ask questions, as they were accustomed to do. The students then went out and very soon Dr. Parkman appeared.

He came in a great hurry, up to his table, where he was standing. Dr. Parkman asked him if he was ready for him and Dr. Webster said he was. Dr. Parkman took out of his side pocket a bundle of papers, done up loosely—in a brown paper, I think—and drew out some notes, and he (Dr. Webster) took out his money and paid him \$483 or \$484, and some odd cents. There was a four about it, but I cannot tell whether it belonged to the dollars or the cents. He seized the money without counting it, and was going off. I said, there is one thing which you have forgotten, doctor—where's that mortgage? Dr. Parkman replied, I haven't it with me, but I will see that it is properly canceled. He then rushed out of the lecture room with these bills in his hand, carelessly exposed to view.

I asked him what money he paid him, as it might lead to a

discovery; he said that he could recollect but one bill; a \$100 bill on the New England Bank; asked him if they were out-of-town bills or city bills—or large or small denominations. He replied that he could recollect only that one \$100 bill; asked him if he had the notes which Dr. Parkman had given up to him; he answered in the affirmative, but in a way which made an unfavorable impression on my mind; his eyes dropped and he did not look me in the face; asked him if any one was present at the interview and he said very emphatically, No. He then turned the conversation to the subject of our families, Fayal, etc., and I shortly after left.

Had been acquainted with the doctor for a good many years; I noticed that his manner was singular on my first entering his room; he seemed to want that cordiality and politeness that are usual to him; thought that he looked pale; he received me in a stiff and formal manner; am confident that he did not put out his hand to me; when speaking of Dr. Parkman's being angry, he stood, fixed to the spot, and seemed to place himself on the defensive, as if waiting to be interrogated; he made no expression of sympathy for the family of Dr. Parkman; said very little about the search, and made no inquiries at all about the family of Dr. Parkman; the interview lasted some fifteen or twenty minutes; he changed his position and manner; went out by the same door at which I entered; heard him bolt the door after me.

Charles B. Starkweather. Am a police officer; took part in the search for Dr. Parkman the day

after his disappearance till the remains were found. Accompanied Mr. Kingsley to the college, Monday, November 26th; saw Mr. Littlefield and Dr. Bigelow, and Dr. Ainsworth; told them that we had come to look over the college for Dr. Parkman; they offered no objection and we went in. Mr. Littlefield tried Dr. Webster's lecture room door and it was fastened; he knocked on it two or three times, quite hard, and then Dr. Webster came and opened the door. We told him what we came for; he opened the door; we went in, down the steps to the back laboratory, and to the lower laboratory; he followed us down. When we got to the steps of the lower laboratory, Dr. Webster said, This is all my apartments. We merely looked round the rooms and were not there more than three minutes. Was one of the party to arrest Professor Webster on Friday night; Mr. Clapp and Mr. Spurr were with me; the doctor talked very freely while coming in, about the railroad to Cambridge, etc; spoke of a Mrs. Bent, who had seen Dr. Parkman on Friday; he wanted us to drive over to the Port to see her; when we got to the corner of Second street, Dr. Webster remarked, You ought to have turned that corner if you are going to the college; something was said about the driver being green; but I could not hear perfectly; I sat on the front seat; doctor sat beside Mr. Clapp on the back seat; arrived at the jail; we got out and went into the back office; Dr. Webster was the first person to speak, and he said, Mr. Clapp, what does this mean? Mr. Clapp said, We have done looking for Dr. Park-

man, and you are in custody for the murder of Dr. Parkman. What! me? says Dr. Webster. Yes, you, Sir, and you are in custody for the murder of Dr. Parkman. Mr. Clapp and Mr. Spurr then left us and said that they would go and see if they could find Mr. Parker and the marshal. Mr. Clapp made out a mittimus, handed it to me and said, Don't commit the doctor until I get back. He had previously searched his person.

Immediately after, Dr. Webster called for a pitcher of water and drank several times. He asked me if they had found Dr. Parkman; told him that I wished he would not ask me any questions, as it was not proper for me to answer them. He said, You might tell me something about it; where did they find him? Did they find the whole of the body? How came they to suspect me? Oh! my children, what will they do? Oh! what will they think of me? Where did you get the information? Asked the doctor if anybody had access to his private apartments but himself. Nobody has access to my private apartments, he replied, but the porter, who makes the fire. The doctor added, That villain! I am a ruined man! There was no further conversation. The doctor would walk the floor and wring his hands and then he would sit down. Saw the doctor put his hand in his vest pocket and put it up to his mouth; he had a spasm; went to him and said, Doctor, haven't you been taking anything? He replied that he had not; helped him up from the settee, and he walked the floor; was with him about an hour, when Mr. Clapp came

back and told me to commit him; went to him; told him that I must commit him; took hold of his right arm and he could not stand; Mr. Cummings, an attendant, and I, led him to the lock-up; told Mr. Cummings I thought he had been taking something and he had better send for a physician, in the doctor's hearing. Mr. Clapp thought that he had better not send for a physician, but go down every few minutes and look to him.

Had to lift the doctor up and lay him in his berth; we laid him upon his side and he turned over upon his face; he had a spasm every now and then, like a man in a fit; next saw him about three-quarters of an hour afterwards, at the Medical College with Mr. Parker, Mr. Andrews, Mr. Platt, and several others, in the upper laboratory. Some one asked where the furnace was and Mr. Littlefield walked towards it and pointed it out; in the laboratory the doctor appeared very much agitated—more so than he did upstairs. Have had some fish hooks and twine in my possession which I now produce. These were found as they now are, in Dr. Webster's private room in his upper laboratory. The hooks were arranged in the form of grapples and had attached to them leaden sinkers of a pound's weight, or more; pieces of twine, of perhaps six or eight yards in length, were wound around each; the fish hooks were some six inches long, with a bend an inch or an inch and a half across; took the hooks and twine on Saturday; they were rolled up in a paper on the shelf in the back private room. On Saturday was in the

upper laboratory and saw Mr. Fuller bring out a tea chest; upon the thigh of the body found in it there was a quantity of twine wound round. Found a bunch of skeleton keys, twenty-four in number, mostly new, or bearing marks of recent filing, in Dr. Webster's back private room, in a drawer, tied up, as they now are.

Mr. Bemis. Did you make any trial of the keys, to see what doors of the college they fitted.

Mr. Sohler objected to this evidence as not sufficiently connected with the prisoner.

Mr. Bemis stated that it would be shown that the prisoner had represented that he found the keys in the street, but tied in the same bunch with the skeleton keys were other keys, acknowledged by the prisoner to be his; as the chemical rooms were separated from the rest of the college, and had no necessary connection with the others, as testified by Dr. Holmes, it might become material to show that the prisoner had provided, or designed to provide himself with the means of access to other apartments, besides his own.

The COURT held the testimony admissible.

Mr. Starkweather. This key fits the dissecting room. This, one of the locks of the door between the lecture room and the back room, and this one the store room door; cannot find that the skeleton keys fit any of the locks of the college; these two brass keys (also found in the same drawer of the back private room, but on a separate string), fit the upper and lower front doors; also found in the drawers of the back private room, or rather in a cupboard, which was

painted on the outside so as to resemble drawers—

Mr. Sohler. I should like to inquire, before permitting the witness to answer further, what the Government expect to prove in relation to that cupboard?

Mr. Bemis. We expect to show that it contained a considerable quantity and variety of ardent spirits. I will add that I do not know, in candor, that there is any necessary connection between the presence of spirits there and the commission of the homicide by the prisoner; but we submit the evidence for what it is worth, as having a possible connection with his acts.

The COURT held the evidence inadmissible.

Mr. Starkweather. Have heard Dr. Webster make some statement in regard to the skeleton keys; while waiting in the police judge's private room, I said to him in the presence of Mr. Andrews, the jailer, Doctor, I found some keys in your back room. What, says he, those that are filed? I picked them up in Fruit street one day and threw them in there, into the cupboard.

Cross-examined. Found the keys all tied together, as at present, on a shelf in the back private room; did not say to Dr. Webster that I had found skeleton keys; recollect about the doctor proposing to go back for his keys and Mr. Clapp telling him that we had keys enough to gain admission with.

Charles B. Rice. Am a police officer; was one of the party who went to search Dr. Webster's apartments the Tuesday after Dr. Parkman's disappearance, as already described.

Samuel Lane, Jr. Am in the hardware business in this city; saw Dr. Webster in my place of business about the first Monday or Tuesday after Dr. Parkman disappeared; Dr. Webster came in and inquired for fish hooks; replied that we did not keep them and he went out. Mr. Stephen B. Kimball, was clerk in the store with me at the time—the store of Mr. R. C. Warren.

Stephen B. Kimball. Am clerk for Mr. R. C. Warren. Monday or Tuesday of Thanksgiving week Dr. Webster called at the store and inquired for large sized fish hooks.

James W. Edgerly. I am a hardware dealer in this city; remember the time of Dr. Parkman's disappearance; a person came into my store Tuesday following, about night, and inquired for the largest sized fish hooks; he bought and paid for a half dozen; these shown me are the same; I think defendant is the person who bought them of me.

William W. Mead. I am a hardware dealer. On Friday, November 30th, a person came into the store and inquired for fish hooks to make a grapple with; he bought three; I put them together and showed him how to form a grapple. The size was considerably smaller than those produced in court; think that it was Professor Webster, but should not swear positively to it. He was dressed in dark clothing.

William N. Tyler. Am a rope maker and a twine and line manufacturer; for forty-five years; have been called upon frequently to give an opinion as to the quality and manufacture of twine. The twine shown me

(consisting of specimens from that tied round the thigh, that used with a grapple, and that found on the ball in the back private room) is what is called two-threaded marline; have not the slightest doubt that all the pieces are of one and the same manufacture and quality. They are all made of good Russia clean hemp, which is unusual in this sort of marline at the present day.

Nathaniel Waterman. I am a tin plate worker; saw prisoner in my place of business November 30th, about 10 o'clock in the forenoon; went up to him and said, Excuse me, doctor, but I want to know how Dr. Parkman appeared when you paid him that note? He said, He took the papers in his hand and darted out in his usual manner. If that is the case, said I, he did not get far from the college, before he was murdered; as some one seeing his money may have enticed him into one of his houses, and I believe that if he is ever found he will be found in one of his own houses, for I do not believe the story of his going over Cragie's bridge. Dr. Webster said, He did go to Cambridge. He said this energetically, as if he was sure of it. He then said, Only think of it, Mr. Waterman! A mesmerizing woman has told the number of the cab he went away, or off in, and Mr. Fitz Henry Homer has found the cab and blood has been found on the lining.

He wanted a tin box. He said that he was going to have small things, say books, etc., put in; spoke of having the handles made very strong; had never made any such apparatus as this for Dr. Webster before, nor

anything precisely like it for any one else. On Saturday morning it came down from the shop labeled; it has not since been called for.

Charles B. Lothrop. Am foreman of Mr. Waterman; remember Dr. Webster calling for a tin box; wanted a square tin box, made of thick tin. Mr. Waterman told him that if he would send the box in after he got his things in, he would solder it up for him. No, Mr. Waterman, said the doctor, I have got to send it out of town, and I have got soldering irons, and will do it myself.

Samuel N. Brown. I am one of the toll gatherers on West Boston bridge; knew Dr. George Parkman and Dr. Webster; On 30th November saw Dr. Webster pass by the window; asked him if he could recognize a twenty dollar bill that I had taken in the morning; did not show the bill to him. In the morning of the 30th, an Irishman offered me a twenty dollar bill to take his toll of one cent from; he said he had nothing smaller; changed the bill for him. I asked Dr. Webster if he could recognize that bill? he said no, that the money he paid Dr. Parkman he had received from the students; some in large and some in small denominations. Dr. Parkman, on the Wednesday or Thursday before he disappeared, came to the toll house and asked me if I had seen Dr. Webster that morning; told him I had not, and he turned and went back to the city. He had been down to the toll house twice within four or six days to inquire for Dr. Webster.

Betsy Bent Coleman. Reside in Cambridgeport; have known

Dr. Webster for years; He called at my house the day of his arrest, about 4 in the afternoon; he said he had called respecting Dr. Parkman, and asked what day I thought that I had seen him; told him I thought I saw him on Thursday, before Thanksgiving, the day before his disappearance, as I was sitting at my window, in the afternoon. Dr. Webster said, Was it not Friday you saw him? I said, No, I was very busy on Friday, down in the lower part of the house. He asked how he was dressed, and I told him that he was dressed in dark clothes and had a cane.

Asked Dr. Webster if he had heard anything from Dr. Parkman. He said that a cloak or coat had been fished up which was thought to be his which had spots of blood on it, and I said, Oh, dear! then I am afraid he is murdered; he says, We are afraid that he is; that there was a twenty dollar bill left at the toll house by an Irishman that was suspicious; he asked me twice or three times, and at the door in leaving, if I was sure that it was on Thursday.

Samuel D. Parker. Was at home, Friday, 30th November, about 8 in the evening when ten or fifteen gentlemen came in suddenly upon me, among them Dr. Henry J. Bigelow, Mr. Edward Blake, Mr. Robert G. Shaw, Jr., Marshal Tukey, and others; they stated that certain discoveries had been made at the Medical College, supposed to be connected with Dr. Parkman's remains, and that Dr. Webster was in jail; told them that if they were satisfied that the remains were human the coroner should be sent for; the matter of hold-

ing Dr. Webster was next talked of; I told them that a complaint must be made before a magistrate and Kinglsey volunteered to make it. We went to the jail and soon the officers came up with Dr. Webster, supporting him and placing him in an arm chair; he was much agitated and convulsed, and asked for water; he recognized me and called me by name, and also Dr. Gay; water was handed to him, but he could not hold the glass; he appeared in great distress, in regard to his separation from his family; begged him to be calm; told him of extraordinary discoveries made at the Medical College; that these discoveries required explanations which perhaps he could give; that I wished that he would go with the officers and see them opened; he said that he would go if he could; I told him that there was a coach at the door all ready to carry him; he wished to have Mr. Franklin Dexter or Mr. William H. Prescott, sent for; I told him that Mr. Dexter lived out of town; he said that some of Mr. Dexter's family were at the Revere House. I told him that it was too late that night to notify the gentlemen he had named, but that they should have early notice the next morning. He spoke two or three times of the distress of his family, which induced me to remark that there was another family which had been in great distress for a week and that we owed duties to society as well as ourselves; I also said to him that there would be an opportunity afforded to him to make any explanation which he saw fit and that I hoped to God he would be able to explain the whole of it. When I left my house I was in-

credulous of his guilt; at the jail I tried to soothe him all that I could, and I said to the officers that he was not to be interrogated. I did not accompany him, but rode down to the college before him, in another conveyance. While at the college I did not speak to him at all.

John M. Cummings. Am watchman and turnkey at the jail; was present when Dr. Webster was first brought to the jail; assisted him down stairs into the lock-up; he could not walk and was in a very bad state; had to hoist him up into his berth and laid him in with his face downwards; he spoke of his family several times and wanted water. Later in the evening Mr. Samuel D. Parker and several other gentlemen came to see Dr. Webster; told him that I wanted him to come upstairs, that Mr. Parker wanted to see him; he did not take any notice of what I said; he appeared to be very much agitated and made the remark, I expected this; went upstairs and told Mr. Parker that he could not come up; then Dr. Gay, Mr. Leighton, Mr. Pratt, and Mr. Jones came down with me; Dr. Gay asked him if he could not get up and go upstairs. He made no answer; we took hold of him in his berth and he made a spring and grabbed his arm about Mr. Jones's neck, as if frightened; we brought him up into the back office and set him up in an arm chair.

Mr. Leighton and I helped Dr. Webster into the carriage to go to the college; helped him out of the carriage and up the steps; he trembled and had a cold sweat on him; his face was quite wet; the wind blew at the time, and the weather was cold; we

lifted him into the coach when we left the college; he could not help himself at all; he spoke of his family, again, as we rode back to the jail; had to carry him down to his cell; went down to see him twice, after this; at 1 and again at half-past two. He lay just as we left him, awake, but seeming to be in distress.

Gustavus Andrews. Am keeper of the Leverett street jail; was at the jail when Dr. Webster arrived; first saw him at the college; a number of gentlemen came down the stairs; Mr. Parker called my attention to the furnace; saw fragments of bones; a piece of skull; when I turned round Dr. Webster was standing about three feet from the privy door in a state of very great excitement—about the time that the privy door was broken open; accompanied the party into the room where the remains were exhibited; when we went in Dr. Webster placed his feet down firm, as if to brace himself up, but as soon as the remains were brought up he commenced trembling again; I took upon myself to direct that he should be taken to the carriage again; found that Dr. Webster was unable to get in; his limbs were perfectly stiff; he could not bend his legs; I got in first and helped draw him in, as if his body was in one straight piece; we placed him on the back seat and he fell back as if faint and unable to support himself. The first thing he said was, Why don't they ask Littlefield? He can explain all this; he has the care of the dissecting room; they wanted me to explain, but they didn't ask me

anything. He then said, Oh, dear! What will my family think of my absence? I said to him, I pity you and I am sorry for you, my dear sir. He replied, Do you pity me; are you sorry for me? What for? I said, To see you so excited; I hope you will be calmer. He said, Oh! that's it. We took him to the jail and put him into his cell; we lifted him in and left him lying upon his back with his head bolstered; had a lantern placed in his cell and watched him some time; seeing he did not move I left him for the night; visited him in the morning and found him just as we left him at midnight; don't think that he had moved an inch all night long; in the course of the forenoon he was able to sit up in a chair; during that morning (Saturday) Dr. Webster said, That is no more Dr. Parkman's body than it is mine, but how in the world it came there I don't know. He said, I never liked the looks of Littlefield, the janitor; I opposed his coming there all I could. The doctor was in such a state of perspiration the night before that I could feel the dampness upon his shoulder blades through his coat. Have a letter of prisoner's which came into my hands, as letters generally do, from those confined in the jail, by being brought to the office by the turnkey; the rule is that all letters shall be examined before they go out of or into the jail. This letter was brought up Tuesday morning, December 4th, open; cannot say who brought it up; the letter was detained and never sent; it was addressed to Miss Marianne Webster, Cambridge.

Boston, Monday ev'g.

My Dearest Marianne. I wrote mamma yesterday and Mr. C., who was here this morning, told me he had sent it out. I had a good sleep last night and dreamt of you all. I got my clothes off for the first time, and woke in the morning quite hungry. It was a long time before my first breakfast from Parker's came, and it relished, I can assure you. At 1 o'clock I was notified that I must appear at the court room. All was arranged with great regard to my comfort and avoidance of publicity and this first ceremony went off better than I anticipated. On my return I had a bit of turkey and rice from Parker's. They send much more than I can eat and I have directed the steward to distribute the surplus to any poor ones here.

If you will send me a small cannister of tea, I can make my own. A little pepper I may want some day, you can put it up to come with some bundle. I would send my dirty clothes, but they were taken to dry and have not been returned. I send a kind note I received today from Mr. Curtis. Professors Pierce and Horsford called today. Half a dozen Rochelle powders I should like. Tell mamma not to open the little bundle I gave her the other day, but to keep it just as she received it. Hope you will soon be cheered by receipt of letters from Fayal. With many kisses to you all.

Good night. from

Your aff't father.

P. S. My tongue troubles me yet, very much, and I must have bitten it in my distress the other night; it is painful and swollen, affecting my speech somewhat.

Had mamma better send for Nancy? I think so; or Aunt Amelia. Couple of colored neck hdkfs.; one madras.

Francis Tukey (recalled). [Three letters were exhibited to witness—one inclosed in a yellow envelope, bearing a post mark of Boston, Nov. 26th; one in a red envelope, bearing the post mark, East Cambridge, Nov. 30th, and one bearing the post mark, like the last, of Boston, Nov. 30th, and he was asked when, if ever, and from what source he had received said letters.]

The first of the letters I received through the Boston post office on the day of its post mark, Nov. 26th; the second from the hands of the East Cambridge postmaster on Nov. 30th, at about half-past twelve, and the third I took from the Boston post office on the same day.

[The anonymous letters were now put in:]

I.

Boston, Nov'r 31, '49.

Mr. Tukey,
Dear Sir,

I have been considerably interested in the recent affair of Dr. Parkman and I think I can recommend means, the adoption of which

might result in bringing to light some of the mysteries connected with the disappearance of the aforementioned gentleman.

In the first place, with regard to the searching of houses, etc., I would recommend that particular attention be paid to the appearance of cellar floors; do they present the appearance of having been recently dug into and covered up again; or might not the part of the cellar where he was buried have been covered by the piling of wood? Secondly, have the outhouses and necessities been carefully examined; have they been raked sufficiently?

Probably his body was cut up and placed in a stout bag, containing heavy weights, and thrown off one of the bridges—perhaps Craigie's. And I would recommend the firing of cannon from some of these bridges and from various parts of the harbor and river, in order to cause the parts of the body to rise to the surface of the water. This I think will be the last resort, and it should be done effectually.

And I recommend that the cellars of the houses in East Cambridge be examined. Yours respectfully, Civis.

II.

Dr. Sir—

You will find Dr. Parkman
Murdered on brooklynt
heights. yours, M.—
Captain of the Dart.

III.

“Dr. Parkman was took
on Bord the ship hereculun
and this is al I dare to say
as I shal be kild
Est Cambge, one of
the men
give me his watch
but I was feared to
keep it and throwd
it in the water rigt side
the road to the
Cam bige to
Bost.”

*Nathaniel D. Gould.*³⁶ Have known prisoner for a long time, by sight; have never seen him write; am familiar with his signature; have seen it appended to the diplomas given by the Medical College for twenty years, in connection with those of the other medical professors, having been employed as a penman

³⁶ GOULD, NATHANIEL DUBEN. (1781-1864.) Born Bedford, Mass. Musician and penman. Author of “History of Church Music.”

to fill out those diplomas for the college; have paid particular attention to the subject of penmanship, having practiced it in

every way and instructed in it for some fifty years; have also published on the subject.

Mr. Bemis. Look at the three letters produced by Mr. Tukey and state in whose handwriting they are; or by whom, in your opinion, they were written.

Mr. Sohier. We object to this proof. No proper foundation has yet been laid by the government for the statement of the witness's opinion. The witness has never seen the prisoner write, nor heard him admit any writing to be his.

CHIEF JUSTICE. He has had occasion, officially, to know his handwriting, for many years.

Mr. Sohier. This kind of evidence, if admissible at all, belongs to a class of evidence exceedingly liable to error, and we do not intend to take the responsibility of permitting it to be introduced, without interposing an objection. We suppose that it is offered on the ground of the decision in the case of *Moody v. Rowell*, 17 Pick. 490. We do not mean to object to the authority of that decision, but trust that the court will not go beyond it. That case, as we understand it, sustains three propositions. First, that genuine handwriting may be laid before the jury for the purpose of comparison with that alleged to be by the same person. Secondly, that an expert may determine and testify from knowledge gained by comparing such specimens, whether the handwriting in question is genuine or not; and Thirdly, that an expert may be permitted to give an opinion whether the imitation of another's handwriting is in a disguised or simulated hand. This case does not come under either of these propositions. The government do not now propose to prove that these letters are in the handwriting of the prisoner; but that though he wrote them, they are not in his ordinary handwriting and they call an expert with a view, doubtless, of instituting a comparison between the writings now in the case, or which may hereafter be put in, in order to enable him to form an opinion upon that point.

The Attorney General. I think that the learned counsel misapprehends the ground upon which we offer this evidence. We do propose strictly to prove that these letters are in the handwriting of the defendant—using the term handwriting in its proper and enlarged sense. The gentleman's argument supposes that if a person's handwriting were generally uniform, but he were occasionally to vary it, that, evidence of the varied style would be incompetent, whereas, if it were always uniform we might have the opinion of the expert to prove or disprove it. Such a distinction cannot have any foundation in principle.

It is conceded that the opinion of the expert is competent to prove a forgery by another. We seek here only to show that the defendant has been attempting to conceal or disguise his own style of writing. Upon principle, which is the more suitable subject for proof, by the expert? Plainly the latter; for the expert's opinion, then, is only

required to extend to a knowledge of one person's handwriting—to show how much a writer differs from himself; whereas, in the other case he is expected to be able to tell how much the writer differs from some third person. The case of *Moody v. Rowell*, I submit, fully covers the ground contended for. But there is one English authority, also, directly in point. I refer to *Rex v. Cato*, 4 Esp. 117. In that case, which was prosecution for libel, the point was distinctly ruled that an expert might prove that a document was written in a disguised hand by the prisoner. I may be permitted, perhaps, to refer also to the ruling of a lower court, the Municipal Court, in two other trials, which were considered of great importance; that of *George Miller*, where both of my learned friends were engaged, and that of *Eastman, Fondy & Co.*, a case which attracted great attention at the time. In both these cases experts were admitted to testify to handwriting, for the purpose of which we offer the same kind of evidence, now. Nor am I aware that there is any decided case at variance with our position.

Mr. Merrick. The precise question now presented to the court has never been decided, that I am aware of. In *Moody v. Rowell*, the genuineness of the instrument was denied; here its authenticity is asserted by the government. The papers there purported to have been written by the party in whose name they stood; whereas, here, there is no suggestion that these letters purport to have come from Dr. Webster. Their very idea, as suggested upon the other side, is that of anonymous, or disguised communications, and in a disguised hand.

Mr. Clifford. We shall contend that one of them is in Dr. Webster's handwriting, upon its very face.

Mr. Merrick. The attempted mode of proof of that fact at any rate is not the common one. It is proposed that an expert may take these papers, which do not purport to have been written by the defendant, and which it is not pretended are in the similitude of his handwriting, and may testify whether they are or not of his writing. It will be attempted to be shown by this expert, I presume, that they may be, or actually are, his, by analyzing the letters and tracing the form of particular strokes of the pen, so as to connect the character of the manuscript with his. And now when we say that all experimental proof of handwriting by opinion is of the weakest and most questionable kind of evidence, we submit, whether it will not be an extension of the rule to permit experts to testify in the manner proposed.

The Attorney General. I find that my friends on the other side confine their remarks to one particular letter which is of a peculiar character. I ought to have added, when I was up just now, that we expect to show that that document could not have been written by a pen. We also expect to satisfy the jury from the testimony of Mr. Gould, that it could only have been written by an instrument which was found in the private room of Dr. Webster. This presents another ground for the proof of that particular document in the manner in question.

Mr. Merrick. I have only to say that we do not object to the rule which has been heretofore adopted. It is only to its further extension. With respect to the last suggestion, I have no opinion to express, whether an expert can or cannot prove that a writing was produced by some other instrument than a pen. Certainly the witness has not yet laid the foundation for the expression of any such opinion by showing a knowledge or skill upon the point.

The CHIEF JUSTICE. We do not see that the precise point presented gives rise to the objection which has been taken and discussed. The witness was asked whether he had a personal knowledge of the defendant's handwriting, and he has stated that he has. His experience qualifies him to say this. Papers have passed under his notice in a business or official capacity which have given him a long and familiar acquaintance with the defendant's handwriting, and he seems, therefore, competent to give an opinion in regard to it, independent of any skill of his own as a penman, or as a judge of penmanship.

In regard to the term handwriting, we think that it should include generally what the party has written with his hand and not merely his common and usual style of chirography. This question of proof of handwriting most commonly arises and is discussed in cases of forgery. But there are other cases where the evidence of experts is applied to handwriting. One is in prosecutions for Threatening Letters or for Arson. There, the question is generally made that they are not genuine on the part of the person purporting to send them, but simulated and disguised and the proof shows that the writer did not seek to imitate a hand but to depart as far as possible from his own. The evidence has always been considered admissible in those instances.

How much further the counsel for the government mean to go, here, we do not know, but at present we think that the letters may be put into the hands of the witness for the purpose of allowing him to say whether they were, or were not, written by the defendant.

Mr. Bemis. State then whether you can recognize the handwriting of this letter [showing *Civis* letter], and whose, in your opinion, it is? State also your reasons for your opinion. *Mr. Gould.* I think it is in *Dr. Webster's* handwriting. In giving my reasons for my opinion there

are some circumstances which may appear trifling to a person who has not attended to the subject. But yet I consider them important. When any one undertakes to forge a hand, there are only two ways in which he can do it.

Mr. Merrick. Did I understand the court, that the witness could go farther than give his opinion? Or is he to state the grounds and reasons for that opinion, which will involve the whole point in issue? The witness has stated his belief, that this is the handwriting of *Dr. Webster*, and he suggests that it is a delicate theory by which he may be enabled to explain it. This is somewhat peculiar, and different from the ordinary practice.

The Attorney General. If you will allow me I will make one suggestion more. I suppose that the witness, so far as he is introduced here, as an expert, stands precisely upon the footing of any other expert; like Mr. Tyler, the twine manufacturer, for instance, who was examined yesterday. If so, then he is to state the foundations of his opinion, like any other expert. The delicacy of the theory, as it is termed by the learned counsel may be a matter of opinion. It may be that this delicate theory will be made so perfectly transparent by the witness as to satisfy every mind that it is palpable and clear in the nature of things, and that I suppose is for the jury to decide, and not to be predetermined here. I trust that the witness will be allowed to explain the grounds of his opinion.

The CHIEF JUSTICE. I do not understand that there is any theory to advance. It is an opinion upon the question of handwriting. The witness has stated that he believes it to be the defendant's, and we think that it is perfectly competent for him to point out the circumstances which constitute the grounds of that opinion.

Mr. Bemis. I suppose that it will be competent for the witness to make use of one or more of the genuine letters in the case as a means of explanation of his opinion.

The CHIEF JUSTICE. That will be a subject for consideration hereafter, if necessary.

Mr. Bemis. State the grounds of your opinion then, that this is in Dr. Webster's handwriting, from your own personal observation of it.

Mr. Gould. It is impossible for me to explain the reasons for my opinion without going into some particulars which may seem very trivial, but which are absolutely necessary for my purpose. In all the practice that I have ever had in writing, I never have been able to satisfy myself that I could make two letters precisely alike—so perfectly similar as to correspond throughout if placed one upon the other. And yet, I never saw two handwritings which I could not distinguish: when I have had a large number of scholars in writing, I have always been able to tell which of them wrote the specimens exhibited to me. There is some peculiarity in every one's writing which enables a person

to identify it, and it is next to impossible to get rid of that peculiarity when the attempt is made to disguise it. I should be very glad to answer only yes or no, but I can only point out those similarities of handwriting inquired of in my own way.

Every man who undertakes to disguise his hand must do it either by carelessness or by carefulness; by carelessly letting his hand play entirely loose, as in mere flourishing, or by carefully guarding every stroke which he makes in order to prevent its being seen to be his. In this latter mode, it is next to impossible for any person to continue his observation for any great length of time, or through any considerable amount of writing, without making some of those letters which are peculiar to himself or making them in that peculiar manner, which he has been accustomed to. Fre-

quently these will consist of only a single particle, or character, but which will yet furnish a key for detection of the real writer. I have already examined and acquainted myself with the specimens put into the case, they having been submitted to me some time since for examination. I have no doubt that the *Civis* letter was written by the prisoner; also the Capt. of the Dart letter; also the East Cambridge letter. This last was not written with a pen; it could not have been; it was done with something soft; the top of the letter shows this; it could not have been done with a brush, for a brush does not begin a stroke in that way.

(*Mr. Gould* here explained at length the reasons for his opinion.)

[The two promissory notes were handed the witness and he was asked in whose handwriting were certain words on them, which the witness more fully particularizes in his answer.]

Mr. Gould. The two words, paid, written across the face of the large note (for \$2,432) are in the defendant's handwriting. So is the memorandum on the back of the \$400 note, in pencil, 483.64, bal. pd. Nov. 22d, '47. The erasures, or dashes, on the face of the two notes, and over the signature could not have been made with a pen, or with anything that had a point to it; they have none of the characteristics of penmanship about them. There are the same indications of the tracing of some fibrous substance in the ink, as in the East Cambridge letter.

George G. Smith. Am an engraver; have been called fre-

quently to give an opinion of handwriting, as an expert, in court; am acquainted with the defendant's signature from seeing it appended to medical diplomas; have also received notes from him in former years. In regard to the Dart letter, I find certain peculiarities as in the other; think that it might be his, but cannot speak of it with any great degree of confidence; of the East Cambridge letter I only speak with the same degree of confidence as of the last. The *Civis*, Dart and East Cambridge letters are in the prisoner's handwriting, in my opinion. I am confident as to the first.

Mr. Bemis said he would call a single additional witness, of whose testimony he had only recently been apprised, and who had arrived in town from the interior of the state since last night's adjournment.

Fisher A. Bosworth. Am a physician, of Grafton; attended medical lectures at the Medical College in Boston during the winters of 1847 and 1848; knew Dr. George Parkman, and also Littlefield, the janitor; had occasion to call at the Medical College on 23rd November, between half-past one and two o'clock; found the door ajar, met Dr. Parkman coming round the corner of the steps very fast, on his way up to the front door; turned my head and saw him nearly at the top of the stairs; about 3 o'clock went back again to the college; rang the front door bell and inquired of Mr. Littlefield if Mr. Coffrain, a student whom I wished to see, was there; he replied that he was probably in the dissecting room; found Mr. Coffrain there.

OPENING OF MR. SOHIER, FOR THE PRISONER.

Mr. Sohier. May it please your Honor, and Gentlemen of the Jury: I am aware that it is usual—perhaps it may be considered as imperative upon the counsel, in a case like this—to call the attention of the jury to the situation of their client; and to comment, in strong language, upon the importance—the vast importance—of the interests which he has at stake. But, gentlemen, I shall not do this; I cannot do it.

I fear much, gentlemen, that, should I permit my attention here to wander from the cause to the party, from the record to the dock, I might be lost. I might, perchance, perceive nothing but the man who, for more than a quarter of a century, has been a respected professor in that university which is the pride of our state; a respected lecturer in that college which is one of the boasts of our city; the man under whose instruction many now present at this trial were educated, myself among the rest; I should see him struggling for his life; struggling for his reputation; struggling to avert infamy from himself and from his children, in that self-same dock where we have been accustomed to see felon after felon, to abide the judgment of the law. I might think of these things, gentlemen, and I might wander from the case.

I must, on the contrary, rather follow—though necessarily it needs must be at a long and humble distance—in the footsteps of the eloquent counsel who opened this case in behalf of the government; and I must allude, gentlemen, briefly, to our duties here; to our relative situation, and relative responsibility to the cause; the rules of law applicable to the charge involved in it; and the rules of evidence, as applicable to its long details of circumstantial testimony.

We are here, gentlemen, as the learned counsel told you, in the discharge of our various duties as officers and as ministers of the Court, to discuss and determine that one great question, which, for months, has absorbed the attention, and has agitated to their very lowest depths the feelings of a great

community; to-wit,—Is the life of Professor Webster, now the prisoner at the bar, forfeited to the laws of his country, upon the ground, and for the reason, that it has been proved here, beyond a most reasonable doubt, that he has been guilty of one of the most horrible offenses that can be found in the long, dark catalogue of crime? A grave and serious duty has devolved upon us—has devolved upon you, the Judges, and upon us, who represent him in this more than mortal struggle. It devolves upon you to say, whether Professor Webster shall depart hence to his family, and there remain, what he ever has been to them, the very center of their affections, the very object of their idolatry; or whether he shall depart hence to the scaffold, leaving to that family a name which they would prefer to bury in the grave—which they would conceive to be their greatest curse, their only disgrace. Yes, it does devolve upon you to say, whether the fire upon his hearthstone shall burn brightly, or whether your breath, Mr. Foreman, when you pronounce the verdict, shall extinguish that fire, so as to cause all its ashes to be scattered to the winds—to be forgotten in kindness by his friends, and in mercy by his enemies.

This duty does devolve upon you, and, if you err, you see the victim. He it is, and his is the family, who must be offered up as an atoning sacrifice to that error, unless, indeed, you err on Mercy's side—upon the side of that quality in which it is permitted man to approach nearer than in any other to the nature of his God—on a side where no prisoner's groan, no widow's sob or orphan's tear, bears witness to it.

And here, and here only, is your lot happier than ours. If we err here, we can err in no safe place. We must answer it to the prisoner and his friends. We must answer it to an exacting and scrutinizing profession. We must answer it to our consciences. There is no place for us to err in. There is a place for you.

Standing, then, as we do, and as you do, engaged in one and the same duty, to-wit: In examining, discussing, and deciding this great question, it behooves us to stand in no

antagonistic position to each other; but, on the contrary, to aid and assist each other, so far as in us lies, and as we can truly do it. Ill would it become us, by any management and chicane, to obtain a verdict in this case; and ill would it become you to permit this defendant to suffer by any error of ours.

It is your duty, and your right and privilege, to constitute yourselves the counsel for this defendant; to see that he has the benefit of everything that could be urged in his defense; to see that he shall have the evidence presented in every possible view that can be taken of it, whether we assume those views or not. And it is your duty to remember, and never for a moment to forget, that, in the words of your oath, it is this defendant whom you have in charge. Yet, it is not this defendant only, but this defendant's family, whom you have in charge.

And here I pray that you will allow me to make a few remarks, upon a subject I would not address men like you upon, on any less important cause, or on any less momentous occasion. But, in the name of this defendant, and all that he has at stake, I must entreat you to commence the examination of this case, by examining your own minds; and that you do it with a strong, settled, stern determination to eradicate everything that partakes aught of prejudice, or savors of suspicion.

I remember well that, before you took your oaths of office, by virtue of which the law has permitted you to exercise this trust, you each said that you were not sensible of prejudice. But, can you say so now—now that we stand at the end of this week of testimony, which the government have been pouring in upon us? Are you sure that you ever could say so, without an accurate and scrutinizing examination? What safety is there in the fact that a man is not sensible of prejudice, when we all know that it is the very essence and the very quality of prejudice, to lurk unseen in the mind of man, blinding his perceptive faculties, weakening his reasoning powers, distorting his judgment, so that the very source to which we

look for safety and protection becomes a source of ruin. There is no safety in the fact that a man is not sensible of prejudice. And I ask you to commence the examination of this case, by discarding prejudice. No man can be safe, without seeking to remove it. Why, if prejudice exists in a single mind, it is contagious; it is communicated by the intonation of the voice; it flies from eye to eye, and is imparted, as by an electric shock, from hand to hand; and there is no safety. We ask you, then, to search for it, and to extirpate it.

As between the prisoner and his jury, as between man and man, speaking as between friends, I do not pretend to say that we have felt, or can feel, positive, that there is no man upon your panel untainted by prejudice. By no means are we to forget, gentlemen, or are we to suppose that you have forgotten, the great excitement which existed in this city when it was first bruited abroad that George Parkman was murdered. Do we now forget that men then quit their avocations,—that they were clustered together in the corners, in the doors, in the stores, the houses, and the churches,—and that their conversation was upon this one point, and upon no other. Have we forgotten the great indignation that was excited in this community—so creditable to the community, but so dangerous to the defendant—when it was first announced that his body was found in the Medical College, in the laboratory? Have we forgotten the prejudice against Professor Webster? Have we forgotten these things? By no means! They are burned into our memories, and we shall not forget them.

Are we to say that it is a certain and fixed positive fact, that there can be no prejudice? By no means! And therefore it is, that after you have heard and listened to the government evidence, we ask you, in the name of the defendant, to examine your minds, and to examine his side of the case free from all taint of prejudice.

I have thought, gentlemen, that, in opening this case, I might perhaps the best diminish the labors of the closing counsel—instead of stating to you minutely, or in detail, the

circumstances which we intend to prove here, in defense—by calling your attention, first, to the rules of law which are descriptive of the offense charged; what it is, gentlemen; what the definition is of the offense, as the government have charged it against him.

Secondly, that I should call your attention to the rules of law, as applicable to the manner in which that offense is charged; that is, to the indictment. Thirdly, gentlemen, that I should call your attention to the nature of the government's evidence, and to the rules of law applicable to that kind of proof. Then, gentlemen, that I should state to you, with great brevity—and merely by scheduling together in heads—what the facts are which we intend to give in evidence; which facts, when proved, taken in connection with such of the government's facts as you shall conceive to be entitled to credit—on which you can rely with any confidence—will constitute the entire mass of evidence on which you will eventually have to pass.

First, then, with regard to the rules of law which describe the offense charged. The offense charged here, gentlemen, generally, is murder. That is the offense charged in the indictment, the murder of George Parkman. We then wish to inquire and ascertain what are the rules describing this offense, so that we may know when it has been proved, and when it is left in doubt.

Murder is a division of homicide; the word homicide extending to every possible killing of a human being. If a man is killed under any circumstances, anywhere, or by anybody, the word homicide covers that act. A homicide must, necessarily, at once be divided into two great divisions: first, that which is criminal, and, therefore, punishable; secondly, that which is not criminal, and, therefore, which is not punishable by the law.

Now, criminal homicide, which is the only species of homicide with which we now have anything to do, is divided into two parts—into two divisions: first, murder, which is punished capitally, by the death of the offender; secondly, man-

slaughter, which is not punished capitally, but which is punished ignominiously, though not with death. These two divisions constitute homicide.

Now, inasmuch as this indictment charges Professor Webster with murder, and inasmuch as it is always competent for a jury to acquit of murder and convict of manslaughter, or acquit of both, every man who is indicted for murder is in the same position as if he were indicted twice; first for one offense, and then for the other.

The first question is, What is murder, taking it by itself? The second question, then, will be, What is manslaughter, taking that, too, by itself? Murder is defined to be "The killing of any person with malice prepense or forethought, either expressed or implied by law." Two things are necessary to constitute murder: first, the killing; secondly, malice. And this definition is precisely no definition, because it gives you no idea of what is intended by the word murder, unless you have an accurate and well-defined idea what the meaning of the word malice is, as used in this connection.

Malice is divided, by all criminal writers, into two counts: first, what is called expressed malice, and, secondly, malice which is implied. Those are the definitions of the word malice. Express malice! When we use that term, we mean what is always meant by malice in its common outdoor use. It means a wicked disposition and perverse mind, which does induce a man, or may induce him, to commit a certain act.

"Express malice," say the books, "is when one person kills another with a sedate, deliberate mind and well-formed design; such design being evidenced by the noticed actions, antecedent menaces, former grudges, and an attempt to do great bodily harm." This is easily understood, without being dwelt upon at the bar.

We come next to what is meant by what is called implied malice. And here the definition is not so easy. Implied malice is where the malice is implied by the law. Now, it is a theory of the law, that it punishes not so much the overt act, as it does the wicked and depraved mind which prompts to

that overt act. It punishes the mind, and the wicked and perverted intention, as much as it does the overt act. But you will ask, at once, how is the law to arrive at the mind of man? How shall it dive down into the hidden recesses, and bring up the malice? It cannot do it, except by judging of the mind by the acts, considering them to be the fruit of the mind. Then, gentlemen, by the fruit, the law undertakes to know the mind.

The law, then, gentlemen, has adopted certain acts which it alleges to be, and assumes to be, evidence of latent malice. The law says, that when certain acts—and we now confine ourselves to homicide—when a homicide is committed in a certain manner, under certain circumstances, malice shall be implied from the act; and that is the mode in which the law arrives at this matter of implied malice. When we undertake to define it, all that we can say is, that when certain acts are committed in a certain manner, and with certain means, then the malice is implied. If we would know what it is, we must ascertain what are the acts and the circumstances. What are the acts? We must arrive at what the malice is, by saying what the acts are, from which it is to be inferred.

What, then, are the acts from which the law will imply malice, in this matter of homicide? For we are to consider only this one single matter, malice in homicide.

Malice, gentlemen, is implied by law from any deliberate and cruel act,—I pray your attention to these words, from any deliberate cruel act,—committed by one person to another, however sudden. Therefore, where one person kills another suddenly, without any, or without considerable, provocation, the law implies malice. Malice is inferred from a deliberate and cruel act, as where one kills another without any, or without considerable, provocation.

When, therefore, you ask what malice is implied by law, you must look at the acts from which the law says malice is to be defined. And that is the only way in which it is to be defined; a deliberate cruel act, without any, or without considerable, provocation; and then the law is, that it is implied

malice. That is the definition which I shall state to you, for the purposes of this trial.

Having stated this, you see shadowed out, at once, the real distinction between implied malice and manslaughter. For one is almost the reverse of the other. Murder from an implied malice is a deliberate and cruel act, without any, or without considerable, provocation. Now, manslaughter, as I have shown you, is the reverse.

Manslaughter is not deliberate. It is a sudden act. It is not a cruel act. But it is done in the heat of blood. Manslaughter is not without provocation, but with it. And therefore, in terms, is most distinctly the reverse of murder from implied malice. Whenever death ensues from sudden transport and without malice, or if upon sudden combat, it will be manslaughter. That, gentlemen, is the definition of manslaughter; and here is shadowed out the line between the two. One is considerate, deliberate, and cruel, without provocation. The other is inconsiderate, sudden, in the heat of blood, and with provocation, or sudden combat, one of the two.

Now this may be a very narrow line of distinction, but it is not to be lost sight of by a jury. For on one side is life, on the other, death: life, it may be, encumbered with long and severe punishment; but still it is life,—life which is clung to—life rendered radiant with hope. And though this line may be a narrow line, and though the circumstances may fade into each other, they are not to be lost sight of. And as one is deliberate, cruel, and without provocation, the other is hasty, in heat of blood, and with provocation, or sudden combat.

Thus much, gentlemen, for murder from implied malice; and thus much for the general definition of manslaughter. But, gentlemen, it is necessary to go a little further here, as I have undertaken to give a definition of both of these offenses. The law states, as I have already remarked to you, that manslaughter is in heat of blood, with reasonable provocation. Now the question arises, what is sufficient provocation to reduce a murder to a manslaughter? What does the law

deem to be a reasonable provocation? To answer this, we must go to the books. And it is easy to answer it from the books, because the different acts of provocation have been well known and long defined, for numerous years.

In ascertaining, gentlemen, what is deemed to be a reasonable provocation, the law always regards the weapon, or the instrument, with which the homicide is committed. For you will see, at once, that one kind of provocation might be considered sufficient to excuse a blow with one weapon, which may be very insufficient to excuse a blow with another. The provocation that might excuse a blow with a stick, might be insufficient to excuse it with an iron bar. In considering what is a reasonable provocation to extenuate the murder into manslaughter, it is necessary to ascertain what the weapon is; because from the weapon the provocation is to be estimated. Now, when we speak of deaths by a weapon, they may be divided into death from two general classes of weapons: those which are likely to produce death, and those which are not; those which are deadly, and those which are not. Now, that is the question raised at once, What is considered a reasonable provocation to reduce a homicide from murder to manslaughter, where a deadly weapon is used? And then, what is a sufficient provocation to reduce it where a weapon not deadly is used? I am dwelling upon this, in regard to the manner of death, because by and by it will become material, when it is necessary to speak—when we come to speak of the indictment. It may be essential to our positions, by and by.

What is a reasonable provocation for the use of a dangerous weapon? and then for a weapon not dangerous? I will answer that first question from a book. And I read from East's Pleas of the Crown. "Any assault, made with violence or circumstances of indignity, upon a man's person, as by pulling him by the nose, if it be resented immediately, by the death of the aggressor, and it appears that the party acted in the heat of blood upon that provocation, will reduce the crime to manslaughter." Take Lanure's case, as it is

called, where a person was riding upon a highway, and another individual whipped his horse out of the track. Then the rider killed the aggressor. That was considered as manslaughter, because the rider was considered as having reasonable provocation. I will also refer to Taylor's case, the same chapter: "Three Scotch soldiers were drinking together in a public house; some strangers, in another box, abused the Scotch nation, and used several provoking expressions towards the soldiers; on which one of them, the prisoner, struck one of the strangers with a small rattan cane, not bigger than a man's little finger. The stranger went out for assistance; and, in the meantime, an altercation ensued between the prisoner and the deceased, who then came into the room, and who, on the prisoner's offering to go without paying his reckoning, laid hold of him by the collar, and threw him against a settle. The altercation increased; and when the soldier had paid the reckoning, the deceased again collared him, and shoved him from the room into the passage. Upon this, the soldier exclaimed, that he did not mind killing an Englishman more than eating a mess of crowdy. The deceased, assisted by another person, then violently pushed the soldier out of the house; whereupon the latter instantly turned around, drew his sword and stabbed the deceased to the heart. Adjudged manslaughter."

That illustrates the position. An assault here existed; turning him out of the house. Upon the heat of blood, occasioned by this assault, he killed his opponent; and it is held to be manslaughter. I state these, as among the provocations to reduce the offense to manslaughter, if the homicide is committed with a dangerous weapon.

The next question is, What is considered a sufficient provocation for a homicide which is committed with some weapon not likely in itself to produce death? The whole doctrine is summed up in East, chap. 5, sec. 20:

"Words of reproach, how grievous soever, are not provocation sufficient to free the party killing from the guilt of murder; nor are contemptuous or insulting actions or gestures, without assault upon

the person; nor is any trespass against lands, or goods. This rule governs every case where the party killing, upon such provocation, made use of a deadly weapon, or otherwise manifested an intention to kill, or to do some great bodily harm. But if he had given the other a box on the ear, or had struck him with a stick, or other weapon, not likely to kill, and had unluckily, and against his intention, killed him, it had been but manslaughter."

And this, gentlemen, is the answer to that question, What is reasonable provocation? Always look at the weapon. If it is a deadly one, it must be an assault upon a person; if not a deadly one, words or actions are sufficient to produce it.

The next question is, What is meant in the law by sudden combat? For the rules state this: "Manslaughter is a killing, on reasonable provocation, or on sudden combat." What, then, is sudden combat, as it is stated? I will answer by reading from the same book, sec. 24, of the same chapter:

"There are cases where, upon words of reproach, or, indeed, any other sudden provocation, the parties come to blows, and a combat ensues, no undue advantage being taken or sought, on either side: if death ensue, this amounts to manslaughter. And here it matters not what the cause be, whether real or imagined, or who draws or strikes first, provided the occasion be sudden."

It is thus, gentlemen, that if two persons get into what is called a combat with each other—no matter which begins it—if they get into the combat, and then, being heated by the combat, one kills the other, then the law considers the frailty of human nature, and, under such circumstances, the offense is reduced from murder to manslaughter. An example is given. A uses provoking language towards B, who thereupon strikes him, and a combat ensues, wherein A is killed. Held manslaughter; for it was a sudden affray, and they fought upon equal terms.

But this has nothing to do with it, except when they commence. If they get excited, on equal terms, and they commence their quarrel with the fist, and afterwards have some other weapon, it is excused, as caused by heat of blood, excited by the quarrel.

This is stated, perhaps, a little stronger in *Whiteley's case*, which I cite from *Lewis' Report*, 175, in which the *Justice*

says, "When persons fight on fair terms, and merely with fists; where life is not likely to be at hazard, and the blows passing between them are not likely to occasion death; if death ensues, it is manslaughter."

These authorities, which I have stated, show the real distinction between murder from implied malice, and manslaughter,—the one being, as I have said, the reverse of the other: one being voluntary, deliberate and without provocation; the other being hasty and on provocation, or with a sudden affray. The provocation being in violent assault, when a deadly weapon is used; the provocation being words, when a weapon not deadly is used, and when, they being excited by the combat, one chances to destroy the other. These are the definitions which I bring to your mind.

Professor Webster stands charged with murder and manslaughter. If he committed the murder, it must have been either express or implied malice, or that he killed him in a deliberate and cruel manner, without reasonable provocation, malice being judged of by the manner and the want of provocation, and the provocation being judged of by the weapon. And hence follows the extreme and vital importance, in a case of this kind, of the government's alleging and proving the manner, beyond all reasonable doubt; for it is the manner, the manner of death, the manner in which the homicide is committed, which creates this crime of murder, from which all the distinguishing marks are to be drawn between murder and manslaughter. And therefore it is that I have been over this—that we may bear it in mind, and apply it, when we consider this part of the case.

When the government say that Professor Webster killed Dr. Parkman with implied malice, they say he killed him cruelly, deliberately, and without provocation. And this is to be judged of by the manner. When the government says that he committed the act of manslaughter, then it virtually alleges that he killed him not deliberately, but in heat of blood, and with some provocation. And there, gentlemen, as we apprehend, is the definition; and this is a statement of the

rules of law defining the various offenses which are embraced virtually under this indictment.

I come, then, gentlemen, to state what we conceive to be the rules of law applicable to the manner in which the crime shall be charged; that is, the rules of law applicable to the indictment.

In examining, in criminal cases, it is essential that the jury should bear in mind, not only what the rules are defining the offense charged, but they should bear in mind, particularly and strictly, what the various particulars of the offense are which is charged; not only what the offense is, in general, but what the particulars of the offense are.

Gentlemen, it is to be borne in mind—and this is a rule of law which is essential absolutely to the safety of every one—that it is a matter of no consequence how many crimes a man has committed, if he has not committed the particular crime set forth in his indictment. It is a matter of no consequence, if he has committed the crime charged, if he has not committed it by the means charged. This is the position which we take, and it is a rule of law intended for the protection of the citizen; and if it is broken in upon, man has no safety. If a man is to be tried for particulars of offense, or for an offense in which the facts are erroneously set forth, no man can provide for his defense; and therefore it is that no man shall be tried for any offense, unless that offense is fully, substantially, plainly, formally, set forth. Not only must the statement be full, but it must be plain, so that every one shall understand it. Not only must it be substantially, but it must be formally, made. If this rule is departed from, there is no safety for any one.

It is essential that we should examine this indictment, and it is essential that we should understand precisely what it is that the government undertake to charge the defendant with. What are the particulars of the offense which Professor Webster is now set at the bar to answer? These particulars must be fully, plainly, substantially, and formally, set forth; and I must, therefore, ask your attention to the indictment.

This indictment contains four counts; that is, it has set forth, in four distinct forms, the charge, and the government are at liberty to prove any one. First, the allegation is, that the prisoner, Professor Webster, killed Dr. Parkman by striking him with a knife. Secondly, that he killed him by striking him with a hammer. Thirdly, that he killed him by striking him with his fists and his feet, and striking him against the floor. Fourthly, that he killed him in some way, or by some means, instruments, and weapons, to the Grand Jury unknown.

Now, may it please the Court, and gentlemen of the jury, I must ask your attention to the rules of law applicable to this indictment. And I shall, in the first place, ask your attention to the rules of law, as I conceive them to be applicable to the three first counts, which can all be readily considered together.

In an indictment for murder, gentlemen, it is an imperative rule, that the means of death shall be accurately described. And when we say that a thing is to be accurately described, we mean that the government shall prove it as they have described it. They shall state the means of death accurately; that is to say, their proof shall sustain their statement of the means of death.

Now I ask your attention to another position. I understand it to be a well-settled rule of law, that there are certain means by which human nature may be overcome, which have been settled and adjudicated by the law to be totally separate and distinct from each other.

One very large class of means of death is embraced under the head of striking with a weapon. Another class, gentlemen, very distinct—distinct upon authority—is striking a man against an object. That is another class, as I apprehend. And there are various other means of death, well distinguished from each other, such as poisoning, strangling, burning, starving, and others. I put this by way of illustration; and I put the position, that these particular means of death are distinct and separate from each other, to-wit, striking a man with a

weapon, striking a man against an object, poisoning a man, strangling a man, burning him, starving him, drowning him, and the like. They are separate and distinct means of death.

Whichever of these means which I have mentioned—and you will notice I say means—whichever of these means the government see fit to adopt, and charge as the means used, the government is bound to prove, and prove beyond reasonable doubt—the particular means. Now, under this class of means, as I call it, producing death by striking, it is usual for the government to allege some particular weapon. But it is not necessary that the particular and express weapon should be proved. Any weapon which will produce death by the means stated, that is to say, by the striking, would answer in proof, instead of what the government charge.

For instance, suppose the government charge that the man produced death by means of striking with a knife, and it turns out that he struck with a hatchet; it is sufficient, because the means, the class, is spoken of; and if it turns out that it is produced by some other weapon, the case is made out. For instance, the government charge Professor Webster with striking with a knife, and it turns out that he actually produced death by a hammer; the case is proved. But, if they charge that he did it in a separate manner, to-wit, by strangling, or by seizing a man, and striking him against a door, and the death is produced, as before, by the blow of the hammer, the indictment would not be sustained. The weapon is of no consequence; but that such a means were used, is of consequence, and must be proved.

I will refer to Kelley's case, Moody's Crown Cases, p. 113; also to Thompson's case, p. 139. In an indictment for murder or manslaughter, when the cause of death is knocking a person down with a stone or other substance, and the mortal wound is from the stone or substance, the charge should be accordingly. A charge that the prisoner struck a mortal blow will not be sufficient. Also, in Thompson's case, the indictment stated that the prisoner assaulted the deceased, and beat him on the head. The evidence was that the prisoner knocked

the deceased down with a blow on the head, and the mortal wound proceeded from the ground. The learned Judge thought the case did not come within the indictment.

I will also refer to another case: to Martin 5, p. 128. In this case, the other two cases which I have cited were confirmed. Here a man was indicted for producing death by striking. The charge was that the prisoner willfully struck him with a hammer.

The kind of instrument is not material. The truth was, there was doubt whether the death was produced by being struck against the door, or by the hammer. The Judge ruled that there was nothing in the count about being struck against a door, and unless the jury were satisfied that the death was produced by the blow, and not by the door, the indictment would not be sustained.

Unless the government prove the means asserted, it don't prove the indictment. The law, as I understand it, is, that the particular means stated must be proved to the satisfaction of the jury.

Now, then, gentlemen, putting our attention to those first two counts, the government alleges that death was produced by striking. What becomes of their evidence? The government allege in the two first counts, and, therefore, the government must prove, that the killing, here in this case, was by striking with some weapon or other. In the third count, the government, if they rely upon it, assert that the striking was with hands, or fists, or beating against the floor. And that is precisely what the government must sustain upon this count.

I come now to the fourth count. We shall submit here, if it be regular, in this part of the case, that this count, may it please your Honors, is totally insufficient, and ought not to be considered by a jury; and that the government had no right to introduce any proof, under this count. That is an insufficient count. And in the second place, if the government have a right to introduce proof under it, still, that they have

not introduced it at all. This count states, as I have said, that the death was produced in some way or manner, and by some means, to the jurors unknown.

Now, we shall submit that there is no precedent whatever for any such count; and if there is no precedent for it, the precedents are all against it. There is no authority for it which we have been able to find anywhere; and the authorities are directly against it.

I will cite, may it please your Honors, in the first place, from Hale's Pleas of the Crown, p. 185: "An indictment of murder or manslaughter hath these certainties or requisites to be added to it, more than other indictments. For it must not be only *felonice*, and ascertain the time of the act done, but must also declare how and with what it was done. Yet, if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning or strangling, it doth not maintain the indictment upon evidence." The same doctrine is laid down in Hawkins' Pleas of the Crown, Book 2d, 84, 23. The doctrine is laid down in these words: "If the killing were with a weapon, the count must show with what weapon in particular; and yet, if upon the evidence it shall appear that the killing was not by such weapon, but by some other, the variance is immaterial, and the appellee ought to be convicted, as shall be shown more at large, under the Chapter of Evidence. And if the killing were not by a weapon, but by some other means, as by poisoning, drowning, suffocating, burning, or the like, the count must set forth the circumstances of the fact as specially as the nature of it will admit." East's Pleas of the Crown, c. 5, sec. 107: It is essentially necessary to set forth, particularly, the manner of the death, and the means by which it was effected; and an omission in this respect is not aided by a general conclusion from the evidence that he was murdered," etc.

The count, may it please your Honors, now under consideration, is clearly distinguishable from the count made use of in the case of Colt. There is one of the counts

which charged that the crime was committed, in the first place, by striking the deceased with a hatchet; and another count charged it to have been committed by striking and cutting him with a certain instrument to the jurors unknown. This case comes nearer to disproving my position than any before the Court. But the means of death are stated; and the means are, to-wit, striking with the instrument which is alleged to be unknown to the jury; and the instrument is immaterial, if it be a striking instrument. He might have struck him with a ramrod, and it would make no difference.

The distinction between our case and that is, that the means of death are clearly stated, but the instrument is stated to be unknown. And we apprehend, may it please your Honors, that this mode, which the government have adopted in the fourth count, of alleging an indictment, would give rise to great confusion. We apprehend that it might contravene many established rules. Why, under a count of this kind, may it please your Honors, there may be an indefinite number of issues tried. Killing in every possible way in which human life may be taken, may be tried under an issue of this kind.

We submit, then, so far as one of these counts is concerned, that it is imperfect and insufficient, for the reasons that I have stated to the Court. In regard to the three others,—the first two allege a death by striking; the third, a death produced by striking with hands and feet, and beating against the floor.

Now then, gentlemen, the question presented to you is this: Has the government proved, beyond reasonable doubt, that Professor Webster destroyed George Parkman by striking him with a weapon? That is the point. The government must prove the killing by the means stated. That is the first proposition. And if the killing is proved by the government to be in any other mode, then they fail upon their own proof. And if the jury, upon the evidence, are left in doubt, whether the killing was produced by the means stated, or by some other means, then they are bound to acquit, under their oaths; because it is the right of the defendant—it is his right and privilege, and it is every man's right and privilege—to

have the government held strictly and distinctly to prove what they allege, in all its material particulars. Here they allege, in these two counts, a striking by a weapon. If they fail in this, there is an end of the case. If you are left in doubt, there is an end of this case. If you believe that he killed him in this way, but you are left in doubt, then you are bound to acquit him.

This is no hardship upon the government. The government may allege as many counts as they choose. They may bring forward charges of death committed by burning, strangling, poisoning, or in any other way. They never need suffer from the privilege which they have to give in stating the means. But then the law holds them to prove some one of the means alleged: and if they fail in that, they fail in their case.

To recapitulate that point. To convict on these first two counts, you must be satisfied, beyond reasonable doubt, that the death was produced by the means of striking: under the third count, that it was produced by means of striking with the hands and fists, and beating against the floor. And we shall submit to you that, with regard to that point, there is not a tittle of proof. I do not suppose that the government will contend that the death was produced in that way. And I apprehend that we might pass from that, and carry you more particularly to the first two counts, of death by striking, because on those the government have produced some apparent proof.

I say that these counts are to be proved here, and proved beyond reasonable doubt. And this brings me to the third statement which I intended to make—what it is that the government must do, to entitle themselves to a conviction, supposing the defendant introduces no proof whatever. What are the government to do, under any circumstances, to produce a conviction? They are to prove that Professor Webster destroyed Dr. Parkman, according to the allegations read over to you, and that he destroyed him by means of striking with a deadly weapon; and if they fail, beyond reasonable doubt, there is an end to the government's case. I say, be-

yond reasonable doubt; and, as I am upon that point, I should like to dwell upon it for a moment.

I am perfectly aware, gentlemen, that there is an idea abroad, that this matter of reasonable doubt is something that the law accords to the prisoner as a gratuity; something that he is not entitled to; something by which guilty men sometimes escape punishment. But there never was a greater mistake in the world. This matter, that the government are to prove a man guilty beyond all reasonable doubt, is no privilege to the individual, for which he does not have to give full compensation. It is not accorded to him as a gratuity. And the examination of our criminal system shows that I am right here.

Under different systems of law, different criminal codes are adopted. I have no doubt but that ours is as perfect as any. Look at it, and see how imperfect it would be, if it were not for the checks put upon it. Every man must be proved to be guilty.

What is our system? We take a man from his family. We arrest him upon the charge of a heavy, heinous offense. We lock him up in a jail. And while his mind is paralyzed by his position, he is told to procure a defense—to proceed and prepare for his defense. What next? Why, *ex parte* proceedings go on. The matter is tried and adjudicated before a Coroner's Jury, where he is not present. It is afterwards tried before a Grand Jury, where he is not represented. An indictment is found; and then, with all this accumulation of public opinion necessarily formed upon these proceedings, he is brought into court, and put upon his trial.

How, then, is he placed? I am now taking the general position of a party; I am not referring to particular instances. How, then, is he placed, and what is his position? Why, he is placed at the bar; his mouth is shut. If he opens it at all, what he says is to go for nothing. And then witnesses are let loose upon him by the government. And who are they? In many instances, they are malicious, swearing on account

of some old grudge. In many cases, they are interested: sometimes for rewards and property; interested sometimes, in swearing of crimes, from themselves; sometimes interested for still worse motives. Now, in this situation, thus placed, and thus presented before a jury, what chance would many and many an innocent man have of an acquittal? It would be very small indeed, were it not for checks and counterbalances which we have provided in our system for him; and one of them is this same matter of reasonable doubt. The law says you may take a man in this way; you may lock him up; you may try him over and over again; you may put him upon trial; you may close his mouth; you may produce your witnesses against him: but here you shall stop. And if, with all this, you cannot prove him guilty beyond reasonable doubt, he is to be acquitted. This is all the protection that an innocent man has.

You may, any one of you, be charged with an offense done when you are alone. You cannot prove that you did not do it. Persons will be mistaken about identity. But you can prove your previous character, and that there is a reasonable doubt. You are, we say to the government, to prove your murder by your means, and beyond all reasonable doubt. And this is as much my privilege, as you have the privilege of trying me, and at your particular leisure. And, therefore, it is most certain and true, that this matter of reasonable doubt, so far from being a gratuity to a defendant, is his right. It is what the law has provided for him as his shield; and though it may be that guilty men may occasionally take shelter under that shield, what does the motto say, but "that a hundred guilty would better escape, than that an innocent man be punished"? The government are to prove it beyond reasonable doubt. And if they fail, there is an end to their case.

It may be asked, What is a reasonable doubt? The answer is well stated in the first volume of Starkie: "A juror ought not to condemn, unless the evidence exclude from his mind all reasonable doubt as to the guilt of the accused. And as

has well been said, unless he be so convinced as that he would venture to act upon that conviction in matters of the highest concern to his own interest.”

It must be such a certainty, then, gentlemen, that you would not hesitate to act upon it in matters of the highest concern to your own interest. It must be such a certainty, I contend, that you would act upon it, if your lives depended on it—“in the highest concern of your own interest.”

If it be such a certainty that you would not venture your own life upon it, what right have you to venture his? You should be convinced, gentlemen, and convinced beyond a reasonable doubt.

These remarks, gentlemen, bring me to the fourth head to which I said I should ask your attention; which was, to the nature of the government’s evidence, and to the rules of law applicable to evidence of that kind. Evidence, gentlemen, so far as there is any occasion of dividing it, for the purpose of this opening, may be divided into direct and circumstantial proof. Direct evidence needs no explanation; and, in point of fact, there is none of it in this case. But merely for the purpose of convenience, I will say, that direct evidence consists of this: where the testimony is derived from persons who have actual knowledge of the facts in dispute—from persons who have actual knowledge of the matter they come to prove.

For instance, gentlemen, if a person comes here and swears he saw a certain transaction take place,—there is direct evidence; and all the jury would have to inquire into would be whether they believed the man or not. If they believed him, there is direct evidence of a particular fact, which he is brought to sustain.

But circumstantial evidence is, where a fact is attempted to be proved, not by anybody who saw it, not by any one who knows it, but by proving in advance certain other circumstances, and certain other facts, and then drawing a conclusion, from those facts and circumstances, that these particular facts which we are endeavoring to ascertain exist. This is called circumstantial evidence. Where the government,—for

instance, taking a case like this,—where the government undertake to prove a certain fact, to-wit, that a man was murdered. They bring nobody who saw it; but they go to work and prove a certain quantity of other facts,—they may be many, or they may be few: and having proved those other facts, they say we draw a conclusion, that the main fact was as they contend it was,—that is, that the murder was committed.

Now, gentlemen, as you see at once, in this matter of evidence, there is no comparison between the strength of direct and circumstantial evidence. Circumstantial evidence is weak, compared with direct; and for the reason that the opportunities for human error are multiplied. All we can do, in the investigation of facts—all we ever can do—is to approximate towards certainty.

Nothing human is infallible. On the contrary, everything is fallible. All we can do is to approximate; and we approximate near or at a distance, in accordance with the means we have at our command.

Now, gentlemen, if a murder is proved by direct evidence, what are the chances of error? A man comes here, and swears to a certain fact. What are the chances of a jury being led into error? The chances depend upon his lying. If he swears falsely, then we are misled. But he comes, and swears to a solitary fact. But he is not likely to mislead us, because it is so simple.

Take a case of circumstantial evidence. The proof sometimes consists, as in this case, of numerous facts—of scores of facts. Every single fact is a distinct issue. Every single fact must be proved, beyond a reasonable doubt. Very well. Here the chances of error accumulate.

If they prove one fact, by one man, he may lie. If they prove another fact, by another man, he may lie; and so the chances of error multiply. And then, after all the circumstances are in, what do you do with them? Then you are to draw the correct conclusion from them. Human judgment is called in, to draw the accurate conclusion from these facts. And here there is a great source of error. Circumstantial

proof is exposed to error from beginning to end; errors in testimony from which the circumstances are intended to be established; errors in the inferences and conclusions which we draw from after we have collected them.

Take the most simple case we can possibly put. Suppose a man is seen killed upon the sidewalk. Suppose a watchman comes, and swears that he saw a man running away. A second swears, that, the house being pointed out to him, he went in, and arrested a man who appeared to be out of breath. A third comes, to say that he afterwards found blood on some clothes belonging to the prisoner. Take the first witness. He may be mistaken about the man, and about the house, and he may lie;—three chances of error. The second may be mistaken about the man whom he arrested, or the house which he thought was pointed out, or he may lie;—three more chances of error. And the third may be able to detect blood or not, and he may be mistaken about his statement whether the clothes were those of the prisoner, or he may lie, too. Here are all these accumulated chances of error. And then, when they are all proved, correct conclusions are to be drawn from them. It may be that he did commit murder. It may be that he was an innocent man, who was running along that way; it may be that he ran away from terror, at seeing such a blow struck; it may be he was a friend of the deceased.

I put this as a simple case; and yet you see how great the chances of error are. But when you come to such a case, as this, there is no telling to what a height those chances reach.

It is, gentlemen, necessary also to remember, as I apprehend—certainly it is not the least important part of this evidence—that we are always drawing incorrect conclusions; and hence the number of innocent persons who have suffered from circumstantial proofs have lost their lives, so far as we can judge, from cases made up from incorrect inferences; not so much from paucity on the part of witnesses, as from the incorrect inferences drawn by the jurors.

Take that most common of all cases, cited continually: where an uncle and a niece lived together; and the niece, one

evening, was heard crying out, begging him not to kill her. On the next morning, she had disappeared. He, being charged with the deed, and being put to his wit's end, found another girl to simulate his niece. The deception was found out, and the man was convicted and hanged. But it afterwards appeared that the niece came back, having only run away. Here were these circumstances laid before conscientious jurors; circumstances proved by conscientious witnesses. But they erred.

He who is arrested with stolen goods in his possession has to answer for it. It implies a theft. There is an old and well-established case, in illustration of this, where a man, who had stolen a horse, got a countryman to hold him, knowing he was pursued. Presently, the constable came up, and arrested the countryman. Here was a plain case. He was found with the stolen property in his possession, immediately after the theft had taken place; and he was hanged for it.

I am induced to dwell upon this for a moment, because I am perfectly aware that there are certain opinions, that circumstantial evidence is necessarily correct, and that circumstances cannot lie, and various other sayings, that are totally false; sayings which probably applied to the circumstances in connection with which they were first mentioned, but, by being stupidly repeated over and over again, have received the dignity of proverbs. The truth is, that circumstances do not; but the witnesses who undertake to prove them may lie, and the conclusions drawn from them by human judgments may lie; and it is all idle to suppose that there is any particular virtue in circumstantial evidence. But, on the contrary, it should be remembered, that it is always weak and uncertain.

I will read, merely as a part of my argument, from Mr. Best's work on Presumptions of the Law, p. 253. Speaking on this very point, and in regard to this prevalent idea, that circumstantial evidence is strong, he says:

"Juries have been told from the bench, even in capital cases, that 'where a violent presumption necessarily arises from circumstances, they are more convincing and satisfactory than any other kind of evidence, because facts cannot lie.' Numerous remarks might be made on this strange proposition. The first that presents itself is

that the moment we talk of anything as a consequence necessarily following from others, all idea of presumptive reasons is at an end. Secondly, even assuming the truth of the assertion that facts or circumstances cannot lie, still, so long as witnesses and documents, by which the existence of these facts is to be established, can, so long will it be impossible to arrive at infallible conclusions. But, without dwelling on these considerations, look at the broad proposition—facts cannot lie. Can they not, indeed? When, in order to effect the ruin of a poor servant, his box is opened with a false key, and a quantity of goods stolen from his master deposited in it; or, when a man is found dead, with a bloody weapon lying beside him, which is proved to belong to a person with whom he had a quarrel a short time before, and footmarks of that person are traced near the corpse—but the murder has, in reality, been committed by a third person, who, owing a spite to both, put on the shoes and borrowed the weapon of one to kill the other—did not the circumstances lie—wickedly, cruelly lie? There is reason to fear blind reliance upon the dictum, ‘that circumstances cannot lie,’ has occasionally exercised a mischievous effect in the administration of justice.”

Another great cause, gentlemen, why circumstantial evidence is not to be relied on, to a great extent, is, what is called a moral cause; that there is a well-known tendency of the mind, when great crimes are suspected, which leads witnesses particularly, and even jurors, to exaggerate facts, and to place great reliance upon their own shrewdness. This, gentlemen, is also alluded to in the same book from which I have quoted. I will read it, as a part of my argument. Speaking on this very subject, Mr. Best says:

“There is an anxiety naturally felt for the detection of crimes, particularly such as are either very heinous, or peculiar in their circumstances, which often leads witnesses to mistake or exaggerate facts, and tribunals to draw rash inferences, and there is also natural to the human mind a tendency to suppose greater order and conformity in things than really exist, and a sort of pride, or vanity, in drawing conclusions from an isolated number of facts, which is apt to deceive the judgment. Accordingly the true meaning of the expressions so frequently to be found in our books that all presumptive evidence of felony should be warily pressed, and admitted cautiously.”

So far with regard to the government’s evidence. In this case it consists entirely, solely, of circumstantial proof. And in many cases the circumstances relied upon are actually proved by other circumstances.

It is undertaken to prove circumstances by circumstantial evidence itself. And who shall say to what extent the sources of error have thus multiplied? Owing to this known tendency of circumstantial evidence to mislead the mind, owing to the danger which is likely to arise, the law has adopted certain rules, which are to govern and to guide juries in considering it. Some of these rules I shall call your attention to, because I consider them pertinent. There may be others mentioned hereafter.

The first rule which the law has adopted, for the purpose of guarding, as far as possible, against error—(as for guarding against it entirely, it cannot be done; there is no human tribunal where it can be guarded against; but to guard against error to some extent, certain rules of law have been adopted)—the first rule I shall name is this. It is an established rule of law, that every circumstance which is relied on must in itself be proved beyond all reasonable doubt. The first rule is, that every single circumstance from which the conclusion is to be drawn must be proved in itself beyond all reasonable doubt. That, of course, shows you that every circumstance is a separate issue, in itself. Every circumstance is to be proved beyond reasonable doubt; and that, you understand, means this: you must find that it is proved beyond all reasonable doubt, when all the evidence is in; not that any one witness proves a point particularly; but, when you come to consider all the evidence in the case, introduced by each side, upon each point, you are to be satisfied of each individual circumstance, beyond all reasonable doubt.

Therefore it follows necessarily, that if in a long train of circumstances, upon which the case is hung up by the government, there is any one single circumstance which fails, there is an end to the whole case at once. They undertake to anchor their case by a chain of circumstances. If one link breaks, by its own intrinsic weakness, or by any force which the opposite party brings against it, there is an end to the case.

Secondly, gentlemen, the circumstances which are proved

when you find they are proved beyond reasonable doubt—those circumstances must establish, to a moral certainty, the particular hypothesis attempted to be proved by them. That is to say, if the government undertake to prove a certain fact, by circumstances, and you are to consider it proved by an inference drawn from those circumstances, the circumstance must prove that the inference is correct. That is to say, not only the circumstance must be proved beyond reasonable doubt, but also you must be satisfied that the inference is proved beyond all reasonable doubt. And that is the second circumstance.

Thirdly, gentlemen, the circumstances—and I pray your attention to this rule—these circumstances which are proved beyond reasonable doubt, must not only support the particular hypothesis which the government intend they shall support, but they must not support any other hypothesis. That is to say, they must not only sustain the inference which the government draws from them, but they must exclude every other possible inference. Because, if a set of circumstances could establish two distinct hypotheses, and one is contrary to what the government assert, and the other in accordance with it,—that is to say, if one is in favor of the defendant's guilt, and the other of his innocence,—there is an end of their case. The jury are bound to take his innocence for granted. And it is from this rule's being disregarded, being overlooked, that a vast quantity of misery has been inflicted upon innocent people.

I will refer to Best upon Presumptions of the Law, p. 282. "The evidence against the accused—"

Mr. Clifford. I do not understand that that work is authority in these courts. I have not been much in this court; but I suppose that that is the work of a very extravagant man, and I do not know that it has been passed upon by the Court.

Mr. Sohier. It is a work that has been cited here very often; and I am not sure that it was not cited in Peter York's case. I think it was.

Best refers to Starkie's Evidence, and to Wills on Circum-

stantial Evidence, as authorities. The rule is stated, as taken from several works, that the evidence must be such as to exclude, to a moral certainty, every hypothesis but that of the guilt of the defendant. And if any other hypothesis can be sustained, it is for the jury to assume that hypothesis to be the true one. And Mr. Best says that this must be "understood by reference to instances where inattention to contrary hypotheses has led into error. In the first place, then, the safety of individuals has occasionally been jeopardized by the fabrication of circumstances; which may be either casual, or intentional. Under the former are ranked those cases where the accused, although innocent, is shown to have had peculiar temptations, or facilities, for committing the act with which he is charged: as where, in cases of murder, he has lived with the deceased, or had an interest in his death; or where a man becomes covered with blood, by coming in contact in the dark with a bleeding body; or death is produced by a weapon which is proved to be the property of a person, who, nevertheless, is not the real criminal." These are cases which I shall read, if they are proper authority.

CHIEF JUSTICE SHAW. Taken with a qualification, that it must be consistent with every other reasonable hypothesis.

Mr. Sohier. The particular case which I was going to state to the jury—and there are several cases stated—was this: "A servant-girl was indicted for the murder of her mistress. The chief evidence against her was, that no one person lived in the house but the prisoner and the deceased, and all the doors and windows were secure as usual. After the prisoner was condemned and executed, it appeared, by the confession of one of the real criminals, that they had gained admittance into the house, which was situated in a very narrow street, by means of a board thrust across the street, from an upper window of an opposite house, to an upper window of that in which the deceased lived; and having committed the murder, returned the same way, leaving no trace behind them." And there are numerous other cases.

I put this by way of illustration, as a case in which the cir-

cumstances were proved. The error was in the inferences. And cases are continually occurring, in almost every man's life, when these circumstances might take place. And hence these rules are considered most essential for every citizen; and they can never be lost sight of without endangering the party, and every other person who may be placed in the same situation.

I wish to draw your attention, for a single moment, to these rules. There is only one of them to which I will ask your attention. Take the government's evidence. I will merely state it generally. What is the government's evidence? Why, it consists of one great chain of circumstantial proof, with which they have endeavored to surround the defendant, and by the weight of which they have endeavored to crush him. This chain consists, of course, of two great divisions, two great parts. First, what is called the *corpus delicti*; that is, that George Parkman came to his death by violence from somebody. That is the first link. Secondly, that Professor Webster was the party who produced that, and that he produced it in the manner alleged. These are the two great divisions, and each of these divisions, of course, goes into various subdivisions, and the subdivisions into various links.

But without stopping to consider that, let us see how the government support their case. Take the first great division of their chain. They say that Dr. George Parkman was murdered. That is the very first point with which they start, that he came to his death by violence. How do they undertake to prove that? By various circumstances, all leading to one end; that Dr. Parkman being in the Medical College, where it is admitted he was, never came out. And that is the circumstance upon which they begin to build their chain.

Now you notice at once the various circumstances on which they rely—the handbills, search, and everything else. That is the first part of the division of their proof, that, being there, he never came out. Take the second. They have a link of precisely the same kind, or a duplicate of the other. They say that Professor Webster destroyed him by violence. Why?

Because he was the last person with whom he was known to be; and if he did not destroy him by violence, the government do not know who did.

Now suppose that he left the college. If that one link be broken, their whole chain runs away.

Take another department of their case. They say they prove the identity of the body; and that constitutes one department of their proof. How do they prove it? Principally by the teeth found in the furnace, by marks upon the teeth! Suppose it should turn out that there is no very great peculiarity; there is an end of their identity. If it was built upon other circumstances, it might stand upon them. I have put these points solely by way of illustration.

The great points to be borne in mind are, first, that every circumstance relied upon must be proved beyond reasonable doubt; secondly, that the circumstances must establish to a moral certainty the guilt of Professor Webster. To do that, the third rule must come in—that these circumstances must not support any other hypothesis. If they do, there is an end of the case.

What must be the line of defense taken up by any man, who is indicted and tried upon circumstantial evidence? It must consist in denying this; it must consist simply in this,—to-wit, that the circumstances relied on by the government are not, and cannot be considered to be, when all the evidence is in, established beyond all reasonable doubt. And that is the point which we take—that these circumstances are not and cannot be established, when our evidence is in, beyond all reasonable doubt.

Secondly, that these circumstances do not sustain the hypothesis attempted to be founded upon them, *to the exclusion of all others*; but, upon the contrary, conclusions can be drawn from these circumstances better in favor of the innocence than in favor of the guilt of Dr. Webster. So much with regard to the rules of law as applicable to the crime charged, as applicable to the manner in which it is charged, as applicable to the nature of the evidence which has been adduced here.

I come, then, to state, very briefly, and very generally, merely the heads under which we intend to introduce some evidence. We do not intend, gentlemen, in this stage of the proceedings,—for it is not necessary, and it would, in my opinion, be totally irregular,—to go into any examination of the circumstances which the government have been attempting to prove, or to show which of these circumstances we deny, and which we admit. That is to be explained in another stage of the case. My duty is to show to you the heads under which we intend to introduce our proof.

We say we do not intend to produce any direct evidence for the purpose of explaining by what means those human remains came into that laboratory, or beneath it. Professor Webster remains on the position which he originally took. He knows nothing about it. Those are the remains of a human body. We can no more explain these than the government can. We can explain it only by hypothesis, as the government has explained it. The defendant stands as you would stand, if similar remains were found upon your premises, under the foundation of your house, in your work-shop, anywhere. So he stands, and so he must stand. And we know of no direct proof by which anything of the kind can be explained.

Again, in regard to the interview which took place between Dr. Webster and Dr. Parkman, it is impossible for us to introduce direct proof. In the nature of things, no direct proof can be introduced. For, as you see, the circumstances exclude all direct proof. The statement of the case, as put to you, is that the parties met alone, and that the interview was an interview by themselves. Of course, there can be no proof brought about that interview. The evidence in regard to this, seeing that we have no direct proof,—seeing that, from the nature of things, we can have no direct proof,—must be circumstantial. And such circumstances as we can introduce, in connection with such of the government's circumstances as you give credit to, must constitute the bulk of the testimony in this case, upon which you must render your verdict.

The evidence, under the heads in which we shall introduce

it, is simply this: Professor Webster stands charged here with having committed a cruel and an inhuman act. That is the charge against him. In regard to his being the person to commit an act of that kind, we shall introduce his character and reputation. The law, gentlemen, I am free to say to you, does not give the same weight to character, where direct evidence is brought to bear upon a party, which it does in all doubtful cases, or where the government depends upon circumstantial evidence, which make up, of course, doubtful cases, and which must be doubtful cases.

Where a man stands charged, on circumstantial evidence, and in a doubtful case, with the commission of a great crime, the very greatest weight is to be given to character. And his character is always admissible, with this view. If a man should be proved, by direct evidence, to have committed murder, it would be of little importance to prove that he had previously been of good character. The only issues that could be made of his character, in such a case, would be to show that the witnesses who swore to the fact could not be true. The argument would be that the witnesses did not swear to what he did do.

But when you come to a doubtful case—a case of circumstantial evidence—then there is weight to be placed on character; and a man has a right to be judged of, by his fellow-citizens, by a character which he has earned and established by a long life. Now, in introducing character, a man shall be at liberty to introduce it simply and solely so far as his traits of character have a direct bearing upon the offense charged. For instance, suppose a man should be indicted for felony and larceny. It would be perfectly ridiculous to show that his character for humanity was good. His character for honesty would be in issue. Suppose a man was indicted for perjury. His character for truth and veracity would be at stake.

Professor Webster is charged with doing a violent, inhuman and cruel act. And I shall introduce evidence, with regard to his character, by which you will judge whether he would do this act. And I shall be very much mistaken, if

we do not establish strongly upon that ground. Again, we shall undertake to show, so far as proof is accessible to us (for you will bear in mind that the arrest of Professor Webster took place after a week, in which many of his acts were committed), what his conduct was, and how he spent his time, during that period.

We shall also introduce proof, gentlemen, in regard to the question, whether Dr. Parkman was ever out of that college, after that fatal Friday noon. For we are mistaken if there is not proof to show that he did come out of it. That may not have bearing as to whether that is his body or not; but it will have an important bearing as to whether he was destroyed by Professor Webster, as is alleged by the government. The facts are simply these, in regard to the evidence we introduce:—

In regard to the character, and to the various heads to which I have alluded, Professor Webster is a person who has all his life been devoted to the pursuit of chemistry. He is a person of nervous disposition; but a man exceedingly peaceable and harmless in his habits and his conduct. We make no question, in regard to his nervousness. He may sometimes show petulance. But so far from being a violent man, familiar with deeds of blood, nothing can be further from this. He is naturally a timid man.

He has, gentlemen, as I have stated to you, always been devoted to this pursuit; and he has devoted his days and his nights to it. Whatever advancement he may have made in this pursuit of chemistry—whatever accumulated wisdom he may have—we do not claim for him.

In reference to dealing with the world, he is not a shrewd man. On the contrary, he may be considered the reverse; that is his character, so far as we know it. But it is not a new thing for him to be locked up in his laboratory, days and nights. It is no new thing for him to exclude the janitor, or anybody else, when he is conducting his experiments. It is a safe and necessary practice, in all laboratories. True it is, that, at the time when these pipes were new, certain persons had access to them, for the purpose of keeping them clear;

but, for certain very good reasons, he stopped that use of it, and let the water run off.

All this is, and this alone, the head and front of his offending. The interview took place precisely as Dr. Webster has stated, and Dr. Parkman left the college; and Dr. Webster left the college at quite an early hour for him, on that Friday afternoon.

We shall show you how Professor Webster passed the rest of the week; that he was at home almost every day, at dinner; almost every night, at tea. These are all the peculiar circumstances under which we are prepared to produce evidence, excepting that we may introduce evidence directly contrary to what the government have put in, upon certain points. This is the statement, and all the statement, that we intend to make to you, upon the opening of the case.

WITNESSES FOR THE PRISONER.

A number of prominent residents of Boston and Cambridge testified that they had known him well and long; that he had the reputation of a quiet and peaceable man, sometimes irritable,

but never violent. These gentlemen were *Joseph T. Buckingham*,³⁷ *John G. Palfrey*,³⁸ *James Walker*,³⁹ *Francis Bowen*,^{39a} *Joseph Lovering*,⁴⁰ *George P. Sanger*,⁴¹ *Convers Francis*,⁴²

³⁷ BUCKINGHAM, JOSEPH TINKER. (1779-1861.) Born Windham, Conn. Editor *New England Magazine*, 1831-1834. *Boston Courier*, 1828-1848. Author of "Specimens of Newspaper Literature," "Recollections of Editorial Life."

³⁸ PALFREY, JOHN GORHAM. (1796-1881.) Born Boston, Mass. Unitarian minister. Editor *North American Review* for many years. Professor of Sacred Literature, Harvard, 1830-1838. Member Massachusetts General Court, 1847-1849. Secretary of State Conference, 1847-1849. Postmaster City of Boston, 1861. Author of a number of works.

³⁹ WALKER, JAMES. (1794-1874.) Born Burlington, Mass. Unitarian clergyman, 1818-1838. President Harvard University, 1853-1860. Author of many lectures and sermons.

^{39a} BOWEN, FRANCIS. (1811-1890.) Born Charlestown, Mass. Professor of Philosophy Harvard University for many years, and editor of *North American Review*.

⁴⁰ LOVERING, JOSEPH. Born Boston, Mass., 1813. Professor of Mathematics and Natural Philosophy, Harvard University.

⁴¹ SANGER, GEORGE PARTRIDGE. (1819-1890.) Born Dover, Mass.

Abel Willard, John Chamberlain, Joel Giles, Edmund T. Hastings, John A. Fulton, James D. Green, Charles H. Hovey,⁴³ Daniel Treadwell,⁴⁴ Nathaniel I. Bowditch,⁴⁵ J. Dunham Hedge, James Kavanagh, Abraham Edwards, Peleg W. Chandler,⁴⁶ Morrill Wyman,⁴⁷ President Jared Sparks,⁴⁸ Robert E. Apthorp, Samuel P. P. Fay.

March 28.

Charles O. Eaton. Am a sign and ornamental painter; have been employed by Professor Webster to do painting for him, during the last three years; have been to the Medical College frequently to see him; more during the medical lectures than at any other time; always found him in his private room or in the lecture room; he always told me to come to his private room by the door leading from the dissecting

room entry; have frequently been to the college to see him when I could not get admission to his rooms, any way; the doors being all locked on the inside; have been there when the janitor himself could not gain admission; and have gone away a great many times in consequence of finding the doors fastened up; have oftener found the doors bolted than otherwise when I called, unless it would be at lecture hours; presume that Professor Webster was in his rooms at these times, as Mr. Littlefield would tell me so when I saw him.

Samuel S. Green. Reside in Cambridge; gave the information to the city marshal that Dr. Parkman had been seen to go over to Cambridge; was at the toll house the evening when two men stopped in and entered into conversation; one was Mr. Littlefield. He said that he had

Lawyer and journalist. Editor of *American Almanac*, *Boston Law Reporter*, and other legal works.

⁴² FRANCIS, CONVERS. (1795-1863.) Born Cambridge, Mass. Clergyman and author. Parkman Professor of Pulpit Eloquence, Harvard University, 1843-1863.

⁴³ HOVEY, CHARLES MASON. (1810-1887.) Born Cambridge, Mass. Noted horticulturist.

⁴⁴ TREADWELL, DAVIS. (1791-1872.) Born Ipswich, Mass. Inventor and author. Rumford Professor, Harvard University, 1834-1845.

⁴⁵ BOWDITCH, NATHANIEL INGERSOLL. (1805-1861.) Born Salem, Mass. Conveyancer and author.

⁴⁶ CHANDLER, PELEG WHITMAN. (1816-1889.) Born New Gloucester, Me. Admitted to Boston Bar 1837. Founded *Boston Law Reporter*, 1838. Author of "American Criminal Trials" (1841). Member State Legislature, 1845, and City Solicitor of Boston, 1846-1853.

⁴⁷ WYMAN, MORRILL. Born 1812, Chelmsford, Mass. Physician and author.

⁴⁸ SPARKS, JARED. (1789-1886.) Born Willington, Conn. Unitarian clergyman, Baltimore, 1819-1823. Professor of History, 1839-1849. President of Harvard University, 1849-1853. Author of "American Biography," "Life of Gouverneur Morris," and editor of works of Franklin and Washington.

seen Dr. Webster pay Dr. Parkman \$470. I was sitting back in the toll house when the conversation occurred, and there was a police officer near me; understood Mr. Littlefield to say that he saw Dr. Parkman go out of the college the Friday when the money was paid him; noticed the discrepancy in his statements and remarked upon it at the time, after he went out.

Cross-examined. There were several persons present. Mr. Edward Whitney was one, and he understood him as I did at first, but has since changed his mind. Mr. Fifield, the toll man, was there; didn't know the police officer or others. He named the sum as \$480; he did not give any odd cents.

Mr. Bemis. You stated a moment since that it was \$470. No. I said that it was \$480.

Two of the jurors, simultaneously. He said \$470.

Mr. Green. Well it was \$480, and I made a mistake in saying that it was \$470, if I said so; cannot recollect where he said he stood when he saw this money paid; in what particular room; don't recollect his saying anything about seeing Dr. Parkman come into the college.

Samuel P. P. Fay. Saw Dr. Webster the day of Dr. Parkman's disappearance in the evening, called at a mutual friend's house, with my wife; and Dr. Morrill Wyman and wife; stayed there about an hour; Dr. Webster's appearance did not attract attention; he seemed as usual and participated in the conversation upon the common topics of the day; one subject broached with Dr. Wyman was in regard to recent improvements or discov-

eries in ventilation; saw Professor Webster several times the following week; was at his house Sunday or Monday evening, and again Tuesday evening; called Sunday evening to make inquiries in regard to Dr. Parkman; supposing that Dr. Webster would be likely to know it. Another evening, Monday or Tuesday, spent two or three hours at his house playing whist, having been invited to play with himself and family, and played three or four games; Dr. Webster and his daughter playing against Mrs. Webster and myself.

Joseph Kidder. Am a druggist in this city; saw Professor Webster the day of Dr. Parkman's disappearance, in my shop, about 5 o'clock; he called to buy a box of cologne and purchased a whole one; a box contains six bottles.

Marianne Webster. Am a daughter of Dr. Webster; Friday, 23rd, father was at home, at tea, a little before 6 o'clock; he remained till 8, then went to a neighbor's house with mother, my two sisters, and myself, to a friend's house, to a small party, and left us at the gate; when we returned home, at half past 12, he opened the door for us; we remained up a half an hour talking, and he retired to his room at 1 o'clock; don't know where he spent the evening; it was his custom to breakfast at home, but not being up early, Saturday morning did not breakfast with him; saw him again Saturday afternoon, a little after 1; he dined at home with us; after dinner did not see him again till dark, at tea time; he stayed at home that evening, reading

aloud and playing whist with us. This was not one of the evenings when Judge Fay was at our house; remember seeing father come from his study to the tea table; am certain he was at home during the evening; we all went to bed about 10 o'clock; Sunday morning, don't remember seeing father until I saw him at church, at the college chapel; after church he walked with mother and sister, and returned to dinner at half-past 12; we generally dine at 1 on Sundays, but dined earlier that day, that he might go to Boston and inform Dr. Francis Parkman of his having seen his brother the Friday before. Father dined at home on Monday; came home just at dinner time, which is 2 o'clock on week days; he was not at home after dinner; saw him at tea, but think he was away during the afternoon; he was at home in the evening; spent the whole evening with us; had a friend visiting us, and Judge Fay called in and played whist; went to bed about 10 o'clock; father was then in and the rest of the family up. Tuesday, father was at home at dinner, and a little while after; don't recollect as to the afternoon; he was at home at tea, and during the evening; saw him at home between 10 and 11 o'clock; left him up at that time, when I went to bed; Wednesday, saw him at about 11 o'clock in the forenoon; he came into the house at that hour; was in the dining room reading a book and he came in and made some remark about the book; he went out into the garden to trim the grape vines, and worked there till dinner time; he dined at home and remained at home

till after 6, when he came into Boston with us to a family party at Mr. Cunningham's; we left Mr. Cunningham's at half-past 10 o'clock and took the 11 o'clock hourly to Cambridge; left him up when I went to bed that night, sitting in his dressing gown and reading a newspaper; Thursday, Thanksgiving day, father was at home; he spent the most part of the morning in the garden, and spent the evening at home; recollect first seeing him, on Friday, at dinner; he was at home about half an hour after dinner, and then again at sunset; also a part of the evening, till his arrest; have a married sister abroad, at Fayal; there is a constant intercourse kept up between our family and the family there; we keep a journal of all the passing occurrences, from which we write to our sister there; it is from this journal that I have refreshed my memory in regard to the facts which I have testified to; father frequently sends things to Fayal; frequently sends plants put up in air-tight boxes; know that he intended to send some this winter, but cannot say whether he had made any preparations towards it; father has also had corals sent him from Fayal.

Harriet P. Webster. Am a daughter. On Friday, 23rd November, saw father, between half-past 5 and 6 o'clock, at home, at tea; he remained at home till 8 o'clock, when he accompanied us to Mr. Batchelder's; we got home from half-past 12 to 1 o'clock, when I saw him again; he opened the door for us and sat up half an hour with us; he went upstairs at the same time that I did, to go to bed.

Saturday, saw him at 1 o'clock

and afterwards at dinner at 2 o'clock; he spent the afternoon at home till about dark when he went out for about a half an hour; when he came back he brought home a new book with him; he spent the evening with us, reading aloud from the book which he had purchased, an illustrated edition of Milton's *L'Allegro* and *Il Penseroso*; we played whist; saw him Sunday morning, about breakfast time; he went to church and was at home at dinner; after dinner he went into town to inform Dr. Francis Parkman of his interview with his brother; had heard him mention his intention in the morning, but mother dissuaded him, and he put it off till afternoon; recollect seeing him again in the evening, but don't remember at what time; it was after 10 that I retired; think I left him up; saw him on Monday, at dinner time; don't remember seeing him in the afternoon of that day; he was at home in the evening; Miss Wells and Judge Fay were there and we played whist. On Tuesday, saw him at dinner time; don't recollect seeing him again till tea time; in the evening he read aloud part of the time, and a part of the time he played whist; Wednesday morning, breakfasted with him; saw him again about 11 o'clock; he spent the rest of the forenoon in the garden; he was at home in the afternoon, and about 6 o'clock came into town with my two sisters. Thursday, he passed the day at home, in the garden; the evening with us; Friday, he dined at home; saw him again about 5 o'clock in the afternoon; he took tea at home.

Ann Finnigan. I live in Dr.

Webster's family as a domestic. The doctor usually breakfasted from half-past 7 to 8 o'clock; his usual dining hour was 2 o'clock; Wednesday before Thanksgiving, the doctor was at home earlier than usual; he came into the kitchen at 12 o'clock, and I was frightened, thinking that it was dinner time, or 2 o'clock; know that the doctor breakfasted at home every morning while I was there, before his arrest; first missed him the morning after.

Catharine P. Webster. Am a daughter of Dr. Webster. Wednesday before Thanksgiving saw father soon after breakfast; he came home again between 11 and 12 and went into the garden to work, before dinner; he was at home till half-past 6, when he went to Mr. Cunningham's with my sister and myself; we took the 11 o'clock omnibus for Cambridge; while waiting at the toll house noticed the hand bill offering a reward for the discovery of Dr. Parkman; my sister pointed it out to father and he read it aloud, as it was pasted rather high up, above our reach.

Winslow Lewis, Jr., (recalled). When Dr. Webster was at the Mason street college he used to lock his doors against intrusion; I have often found difficulty there in gaining admission to him; was at that time Demonstrator of Anatomy, and he a professor; took very special notice of the cut under the fifth rib in the remains at the Medical College, and am sure that it was anything but a clean cut; it had a ragged opening; would not necessarily follow from its being a clean cut that it was made before death.

Oliver W. Holmes (recalled). There are two leading authori-

ties on the quantity of blood there is in the human body; Haller and Valentine; one says that it is one-fifth of the weight of the whole body; which in the instance of a person weighing one hundred and forty pounds, would make twenty-eight pounds. The other states it at from one-fifth to a quarter; which in the case before supposed, would give from twenty-eight to thirty-five pounds. This last quantity would probably measure something less than seventeen quarts.

The condition of a fracture of a bone after calcination would depend upon the degree of calcination; if the calcination had been very complete, the bone would easily crumble; if only partially calcined, the bone might split and break in any direction; in either case one could not give a very reliable opinion whether the fracture was before or after calcination; such is the result of my observations.

To the *Attorney General*. Upon this I should not defer to Professor Wyman; it is a simple physical fact open to the observation of any one; have examined the piece referred to by Professor Wyman, and cannot see any sufficient reasons for deciding whether the fracture was before or after calcination.

Eben N. Horsford.⁴⁹ Am instructor in chemistry in the University at Cambridge, in the Lawrence Scientific School; have delivered part of the course of chemical lectures at the Medical College in this city since Dr.

Webster's arrest. Have nitrate of copper in my laboratory; should not consider it the best article to remove stains of blood; have made some experiments to see how shortly bone and flesh can be dissolved with nitric acid and potash; being kept in a temperature a little below boiling, the bone had disappeared (all except a very few small pieces) in four hours and twenty minutes, and in five hours and twenty minutes not a vestige of it was to be seen; the flesh disappeared in three or four hours, so that the liquid was perfectly clear; I have also tried the experiment of dissolving human flesh; it took less time than the beef; I have not made any experiments in dissolving human bones; occupied Professor Webster's laboratory after his arrest; found salts of copper there; these salts, or solutions, might be wanted for Sanctorious thermometers, such as I saw there; also saw copper solutions in two other vessels; human blood is not infrequently used for chemical experiments.

After Professor Webster's arrest, sent out various articles of clothing from the laboratory to his house at Cambridge; an old blanket—perhaps more than one; two pairs of pantaloons; one or two coats; a pair of blue overalls, and a light-colored summer cap; can find no trace of blood upon them.

William T. G. Morton.⁵⁰ I am a physician; practice dentistry, and have done so for about eight

⁴⁹ HORSFORD, EBEN NORTON. (1818-1893.) Born Moscow, N. Y. Rumford Professor Harvard, 1847-1863. One of the Founders of the Lawrence Scientific School.

⁵⁰ MORTON, WILLIAM THOMAS GREEN. (1819-1868.) Born Charlestown, Mass. Discoverer of the anaesthetic treatment in dentistry.

years; usually manufacture the mineral teeth which I use; have had an opportunity of seeing and becoming acquainted with Dr. Keep's mode of making his mineral teeth; was instructed in it some five years ago; see no particular marks about these teeth by which to identify them; should think nothing could be judged from the material; should say that they had been ground after being finished, but this is not an unusual thing.

Don't think that the teeth as they now are, fit the blocks with any great degree of exactness; have a block of my own which fits the right side of the cast of the lower jaw of Dr. Parkman. If the blocks shown to me did not appear to have been fused, or to have had an opportunity to warp, should say that it might have been made on this model, as probably as upon any other, and not more so; but as some of the accompanying blocks seem to have warped so as to fall over, I should think that there was a liability of this having warped out of its original shape, and so into a shape to fit the mould.

Cross-examined. Knew Dr. George Parkman. I don't know how to answer your question, whether his jaw was a peculiar one. No two jaws are alike, though there is a general resemblance among all jaws; never saw a person's that his could not be distinguished from, yet I have seen many persons whose under jaw projected as much as his; could identify individuals among my patients who have as prominent a lower jaw as his, but prefer not to do so, from motives of professional delicacy. Perhaps these teeth taken from the furnace might be capable of

identification if they had not been subjected to the action of heat; can identify my own work in many cases.

Mr. Bemis. Did you ever see a set of artificial teeth made for one person's jaw that would fit another's? The teeth might answer for another person's jaw, perhaps, the plate would not.

The CHIEF JUSTICE. Take a complete set, sir, fitted to the plate. I never saw a set thus complete, made for one person, that would answer for another; the case might happen once in a thousand times.

Mr. Bemis. Would the difficulty be enhanced in attempting to find a set that would fit both jaws in connection? I mean that would fit both upper and lower jaw, and at the same time conform to the adaptation of the two jaws to each other? Certainly there would be very much less likelihood of finding such a coincidence in all these respects at the same time. The most prominent specimen of absorption among the casts produced by me is that of a person about fifty-five years old; the absorption has taken a different shape in this instance from that of Dr. Keep's model of Dr. Parkman's mouth; the absorption on the right side also is not coincident with that of the right side of the model.

Daniel Treadwell. Live in the neighborhood of Dr. Webster, at Cambridge, and saw him on Friday, November 23rd, at my house, at about half past eight o'clock; he called with his wife. Dr. Morrill Wyman and wife and Mrs. Treadwell and myself were present when they entered. Judge Fay afterwards came in.

A general conversation ensued, on a variety of topics, and Dr. and Mrs. Webster left at about 10 o'clock. Have endeavored to recall the particulars of the interview but can recollect nothing unusual. He conversed upon any subject that was introduced and appeared cheerful and perfectly self-possessed; there was nothing like distraction or absent-mindedness in his manner; am familiar with his usual demeanor; saw Dr. Webster twice in the course of the ensuing week; first, Tuesday evening, near the burying ground, about 6 o'clock; I had taken tea and was walking down town; we stopped and had a moment's conversation together; met him again on some other occasion, but cannot say when; at both interviews I noticed nothing unusual in his demeanor; we talked of Dr. Parkman's disappearance and he spoke of it in his usual manner; perhaps with some animation, but not differently from what he would of any other passing subject which excited interest. On this occasion, or the other, after we had spoken of Dr. Parkman, he pointed up to a star that was particularly bright and asked some question in regard to it.

James W. Stone (recalled). The hole under the rib in the remains shown to us at the Medical College was not a clean cut; there is no difficulty in making a clean cut after death so long as the intercostal muscles remain tense; no more difficulty than for a butcher to make a clean cut of a piece of beef.

Philena G. B. Hatch. Am the wife of Joseph Hatch; knew Dr. George Parkman for fourteen years; last saw him on Friday,

23rd November, in Cambridge street, between Blossom and North Russell; was going towards home in the direction of Cambridge bridge, and he in the opposite direction, towards Court street; the time was a little before ten minutes before 2 o'clock; looked at the clock when I got home and it wanted either ten or twelve minutes of two.

I fix the day by my husband's starting the morning before, the 22nd, on a journey to Vermont, and that same night, the 22nd, my sister came to stay with me, from Maine, on a visit. The next day, 23rd, I went up to the South End, to inform her daughter, my niece, of her arrival, and it was on my way back that I met Dr. Parkman; looked at the clock to see how long I had been gone. Recalled this to mind the Sunday following, when I was told that Dr. Parkman was missing; said at once that he could not have been missing long, for I saw him Friday afternoon. I mentioned the circumstance of my meeting him to my sister as soon as I got home.

Cross-examined. Did not turn round to see what direction Dr. Parkman took after meeting me; don't know, but that he, himself, turned directly round and walked towards the Medical College; was not his keeper; mentioned it to my sister to cheer her up and make her smile, as she was rather gloomy; told my sister I had met Chin in the street; she asked me who I meant, and I told her Dr. Parkman. Everybody knows that he had a very large chin.

Joseph Hatch. Am husband of last witness; left the city to go to Vermont on 22nd Novem-

ber last, and did not return till 3rd December.

William T. Thompson. Reside at East Cambridge; am clerk in registry of deeds; went to Professor Webster's house Sunday evening, Nov. 25th, with Mr. Fuller, the officer, to ascertain the date of a mortgage, found Professor Webster at home; asked him if he recollected the time he gave the mortgage to Dr. Parkman; he looked into a trunk on the floor and said that it was strange that he could not find the papers; said he could give me the information another way, and read from his journal. He gave me the date of a mortgage and said, But I suppose that that is not the one you want. Told him I wanted the date of the one upon which he had paid the money, the Friday preceding. He gave me the date and on calling on Mr. Paige, the city clerk, found a mortgage on personalty and not on realty.

Dr. Webster said that he had been over to see Dr. Francis Parkman and tell him that he was the person who was to meet his brother; that on his return he asked the toll man if he saw Dr. Parkman come over the bridge to Cambridge, as he had understood that he did; that he had called on Mr. Paige, the city clerk, to see if the mortgage had been canceled. He said he did not find Mr. Paige at home, as he was not aware that communion day in his church came on the last Sunday of the month instead of the first; and so that he was detained; that he had ascertained from him that the mortgage was not discharged. I said we could call at Mr. Paige's ourselves and make the inquiry for

our own satisfaction, as we returned home; that Mr. Paige might have overlooked the cancellation. Saw nothing peculiar about him except his giving me the date of the wrong mortgage. Didn't notice any trembling. Was acquainted with Dr. George Parkman for ten years; saw him very frequently; saw him last on Friday, 23rd November, in Causeway street, ten or fifteen minutes past 2 p. m., was going down the street, and he was coming up. I fix the day, because I paid for this coat which I now have on on that day; also made an abstract of a title for a merchant in India street, which was paid for, that day, and of which I have the copy of the receipt which I gave; had not been in Boston before for nine days. I started from East Cambridge to walk over at 2; the first place that I called at in Boston was the store of Orr N. Towne, corner of Elm and Hanover streets; stopped there to leave some deeds; took out my watch to see the time, and found that it was about twenty-five minutes past 2. This was after I met Dr. Parkman; had walked in from East Cambridge, through Leverett, Causeway, Merrimac, or Portland streets to Mr. Towne's, at a quick pace.

Noticed Dr. Parkman's appearance, when I met him. He was dressed in a dark frock-coat, dark pants, and dark hat; he had his hands behind him and appeared excited, as if angry about some matter; did not turn round to look after him; recalled this to mind on Sunday following, and so stated to Mr. James H. Blake.

Cross-examined. Never use spectacles: am not near-sighted;

my eyes are sometimes weak, and I use glasses slightly colored. My occupation is mainly that of copying; suppose that it tends to weaken by eyes, but not to impair my sight. The broadest part of Causeway street is opposite Lowell street; where I met Dr. Parkman in Causeway street was at the corner of Lancaster street, not Merrimac street; after examination of this map, I should now say that it is Merrimac street; do not carry a magnifying glass for my own use; have one with me now which I sometimes use to examine fine writing; sometimes write in a very fine hand; have never written so finely at one time that I could not read it at another; have never made this statement to any one.

Mr. Bemis. Have you never told any one that you could write so finely in the mesmeric state that no one else could read it in the natural state? No, sir.

Mr. Bemis. Have you never said anything about writing in the mesmeric state? No, sir, I never use the term mesmeric. I may have said something about the biological state. I sometimes lecture on biology. *Mr. Bemis.* What have you said about writing in the biological state? I may have told Mr. Andrews that I could write a very fine hand in the biological state; never told him that I could write so finely in that state, that I could not read it in my natural state; may have told him that others could not read it without a glass. I simply carried the glass for others to use, not for my own satisfaction; do not pretend to say that I have a better sight at one time than at another.

Mr. Sohier objected to the

mode of cross-examination pursued *Mr. Clifford* and *Mr. Bemis* contended that the inquiry as to the strength or kind of vision possessed by the witness was material and pertinent. The COURT ruled the line of inquiry competent.

Mr. Thompson. Do not know whether my power of vision is augmented in the biological state, or not; nor, whether I can see better in that state, at a distance; never use a glass to aid me to see distant objects. Dr. Parkman did not speak to me when I met him nor did he bow.

There was further conversation at Dr. Webster's house, Sunday night; I asked Dr. Webster how Dr. Parkman appeared when he paid him the money. He said that he seemed angry and excited, that Dr. Parkman had called on Mr. Pettee and inquired if he had any money in his hands belonging to Dr. Webster; that Mr. Pettee told Dr. Parkman that he had some of his (Dr. Webster's) money in his hands, and that Dr. Parkman urged him to pay it over to him, and he would give him his receipt. Mr. Pettee, he said, refused, and Dr. Parkman was very angry and said that Professor Webster was a d—d whelp.

When we went out Dr. Webster said, I trust that you will be successful in your search; that he should be happy to render any assistance that he could.

That is my signature and my handwriting, made at the request of Mr. Andrews; it is a rough outline of what occurred at the Sunday evening's interview; Dr. Webster did speak of Dr. Parkman's disappearance creating great feeling in his family, and

the community; he also said that Dr. Parkman had been very insulting to him, every time that he met him; that he had told Dr. Parkman that he would pay him when he got his money for the tickets to his lectures; and that Dr. Parkman said that he would not believe his word. Mr. Andrews was the secretary of the coroner's inquest, and has been employed in collecting testimony for the government; he came to the registry of deeds and inquired of me about the interview; told him that either Dr. Webster said, that two persons, one of whom was the janitor of the college, were present, when the money was paid, or the moment before, or that was my impression of what he said; told him I could not swear to it, but he said that I might as well put it down and sign my name to the paper, and I did so.

Samuel A. Wentworth. Am a provision dealer at the corner of Lynde and Cambridge streets, Boston; knew Dr. George Parkman for two years; last saw him in Court street Friday 23rd November between half past 2 and half-past 3 o'clock p. m.; fix the time by my dinner hour being 1 o'clock; went to dinner and returned and then my young man went to his dinner at 2 o'clock; waited for him to come back to my shop, and after he returned, having been gone more than half an hour, went down town to get my marketing for Saturday; went towards Haymarket Square, and when in Court street, nearly opposite the head of Sudbury street, met Dr. Parkman, opposite Mrs. Kidder's medicine store; he was on the same side of the street with

me, and after I had passed he suddenly faced half round towards the middle of the street with his hands behind him and appeared to be looking up towards the tops of the houses opposite; did not notice whether he left the side walk; he was going towards Bowdoin Square when he stopped.

First called this to mind Saturday evening, when I went home from my shop, about ten or half-past ten o'clock; my wife told me, that two men had been there to inquire about Dr. Parkman. I immediately made the remark, that I guessed that he hadn't gone a great ways, for I saw him in Court street yesterday afternoon.

Cross-examined. There was another lady present when I communicated this to my wife. I also communicated it to Mr. Henry L. Foster, who lives in Blossom street,—after the remains were found; did not mention it to the police.

I can't be precise as to the time when I met Dr. Parkman; should think, that it was about 3 o'clock; it must have been after half-past 2; am sure, that it was not Thursday; for I never buy my Saturday's marketing till Friday. There was with me, Mr. Isaac H. Russell, who recollects seeing Dr. Parkman at some time, but cannot recollect the day; did not mention the fact of seeing Dr. Parkman, out of my house till I told it to Mr. Foster, the Saturday after the remains were found; knew that the search was going on, for Dr. Parkman, and that rewards were offered for the discovery of his body.

Samuel Cleland. Reside in Chelsea, but do business at No.

26 South Market street, Boston; was acquainted with Dr. George Parkman; was a tenant of his in 1839; last saw him on Friday, 23d November, in Washington street, between Milk and Franklin, between a quarter past and half past three o'clock on the east side of Washington street, going towards Roxbury.

Fix the hour from my going up to see the Rev. George Wildes that afternoon; always called on him, (as he officiated occasionally for our church in Chelsea) at 3 o'clock. It was on my way from there that I met Dr. Parkman; know that the day was Friday, in this way. On Wednesday, 21st, I addressed a note to Rev. Mr. Allen, of East Boston, requesting him to officiate at St. Luke's church, in Chelsea, on the Sunday following. Not receiving any answer, Friday morning, I wrote another note to him, and sent it by a boy, to East Boston. The boy returned, and said that he could not find Mr. Allen. He brought back the note and I preserved it, and now have it in my pocket. About eleven, I addressed a note to Rev. Mr. Wourt, of Christ church, asking him to preach for us, and sent a boy with it. He returned with an answer, which I have now in my pocket, stating that he could not preach all day, the next Sunday. Waited till 3 o'clock, in hopes of seeing Mr. Wildes; remember, distinctly, leaving my store at 3 o'clock; went up through Devonshire street and Theatre alley, to Franklin street, and found Mr. Wildes in; spent a few minutes with him, and started to come back again to the store, through Washington street. In coming down Washington street, saw

Dr. Parkman; thought that he was walking with a laboring man, and that attracted my attention. On getting nearer, saw that he was alone. We passed on the same side, nearly touching each other; did not speak to him, as I have not done so for several years; first heard of his disappearance on the Monday following.

Cross-examined. First communicated the fact of my meeting Dr. Parkman, to my partner, Monday morning, when he read the notice of his disappearance, from the newspaper. Did not tell this to Dr. Parkman's family, or the City Marshal; met Mr. Knapp, the Clerk of the Police Court, and told him of it, and he said, that it was unnecessary to speak about it, as Dr. Parkman had been seen at a later hour at the South End; saw the advertisement, offering a reward, in Monday's papers; cannot fix the exact place in Washington street, where I saw Dr. Parkman; think that it was half way between Franklin and Milk streets. The street was not much crowded. He might have been four or five rods off, when I first noticed him. I was on the inner side of the sidewalk, and he, on the outer. There were persons between us, at first. He was walking at his usual pace.

Made no statement about the occurrence, to Mr. Lee, the superintendent of the Providence railroad; may have conversed with him about it; was not aware of any advertisement, requesting notice to be given to the police, of any information about Dr. Parkman.

Lucius R. Paige.—Am City Clerk of the city of Cambridge;

keep the records of the mortgages of personal property.

Saw Dr. Webster at my house on Sunday succeeding 23d of November in the afternoon. He stated that he had called to see if Dr. Parkman had been there since Friday noon, to discharge a mortgage; replied at once that I knew Dr. Parkman, and that I was very sure that he had not been there.

Abby B. Rhoades. Reside in Minot street; knew Dr. George Parkman enough to bow to him for twenty-five years; last saw him, Friday, 23d November, in Green street, near the corner of Lyman place, in front of Emery Souther's apothecary shop, about a quarter before 5 o'clock p. m. There was another man with him; was on the inside of the sidewalk, and my daughter, who was walking with me, was between me and the Doctor, as he passed us, as near as he could. We were going towards Chambers street, and Dr. Parkman towards Bowdoin square. We bowed as we passed; fix the day, because there was no other day, that week, when my daughter and myself went home together through Green street. We had been out shopping, and made some purchases, at Mr. Hovey's store. After leaving there, we went into Hanover street, my daughter taking the bundle with her. The purchase, 11 yards delaine, I paid for at the time, so that no charge was made against me; have been there since, and ascertained that there was an entry made that day, on their books of that amount of cash received, for what I bought.

Have taken the greatest pains to be sure of the day; know that I was at home the next day, Sat-

urday, all day. The day before, Thursday, I was at home also all day; communicated my recollection of meeting Dr. Parkman to his brother, Rev. Dr. Francis Parkman, on the Tuesday following; first heard of Dr. Parkman's disappearance, Sunday morning, in one the newspapers. My daughter first recalled my attention to the fact of having met him on Tuesday. There was conversation at dinner, about the Doctor's disappearance, and she asked me if I didn't remember meeting him in Green street Friday, when he bowed to us; and it then occurred to my recollection, immediately; have a memorandum of my purchase, at home. I cannot be mistaken in the day; remember all my engagements that day, before and after meeting him; did not go out, until after dinner, between 2 and 3 o'clock. I did my shopping, and I was on my way home when I met him.

Cross-examined. Have been a parishioner of the Rev. Dr. Francis Parkman, and felt a great interest in the matter of his brother's disappearance; asked my son some question about it, on Tuesday, at dinner, which led to my daughter's asking me the question which I have mentioned; have never expressed any doubts or misgivings about the accuracy of my recollection. I have not done so, to Miss Patterson. I have talked with her about it, but do not recollect saying anything of the nature of my doubting my memory. If I have I didn't mean to do so; never told Mrs. Harrington, my sister, that if I hadn't said so often that I had seen Dr. Parkman, Friday, I shouldn't feel confident of it now; didn't know

the gentlemen who was walking with Dr. Parkman. It was not Dr. Webster. He was taller and stouter than Dr. Webster; don't know whether they were talking together. They passed so quickly, that I could not see. I don't recollect what the weather was that afternoon.

Mary Rhoades. Am daughter of Mrs. Rhoades. Knew Dr. George Parkman nearly ten years; saw him last, Friday, 23d November, in Green street, opposite Mr. Souther's apothecary shop. My mother was with me. We had come from Mr. Hovey's store, in Winter street. Dr. Parkman was walking with another gentleman, and bowed to Mother as he passed. He was nearer to me than to my mother, and I had to move my bundle to avoid hitting him. The bundle was some de laine, which we had bought at Mr. Hovey's.

Went to Lexington, Saturday, and heard of Dr. Parkman's disappearance, there, the same day. I first mentioned my recollection of seeing Dr. Parkman, to my mother and brother, Tuesday. I did not mention it to any one, before coming to Boston; have taken a great deal of pains to fix the time when I saw Dr. Parkman. The hour was between half past 4 and 5, near dark.

Cross-examined. Did not mention this fact at Lexington; heard no discussion there about it. The gentleman, where I was staying, read the advertisement aloud from the newspaper, to the family; thought it related to his disappearing that same day; heard nothing more said about it till I came into town, Tuesday, and mentioned to nobody in the meantime that I had seen him;

did not inquire myself, when I came to town, whether Dr. Parkman had been heard of. I don't know whether my mother said anything about a reward being offered for him, before I told her that we had met him, Friday.

The gentleman walking with Dr. Parkman, was a stout man; not so tall as Dr. Parkman. He was dressed in a dark surtout; don't recollect the streets through which we returned from Mr. Hovey's.

Sarah Greenough. Reside in Cambridge; knew Dr. George Parkman, personally, for many years, in early life; but only know him by sight for a few years past; saw him last, on Friday of week before Thanksgiving, in Cambridge street, between Belknap and South Russell streets, about ten minutes before 3 o'clock p. m.; had an engagement at tea, and wished to be at my son's house before 3 o'clock, at which hour he was in the habit of leaving it; had the horse harnessed, and was brought down, from my house in Cambridge, to the bridge, and then walked over the bridge, thinking that I should have time to get to my son's, in Temple street, before he left; looked at my watch, after getting across the bridge, and into Cambridge street, and it wanted ten minutes of 3; saw Dr. Parkman just about that time on the opposite side of the street; was on the left hand side, and he on the right hand side; reached my son's just as he was leaving; know that it was the Friday before Thanksgiving that I had an engagement to take tea with a lady in the city, and that it was Friday that I wished to see my son.

Cross-examined. Dr. Parkman was going towards the bridge; had no particular occasion to notice him; only saw him just as he was passing abreast of me, and probably should never have thought of it again, except for the report of his disappearance; do not mean to be positive of having seen him, only believe so.

Samuel B. Dean. Am sales-

man for C. F. Hovey & Co., Winter street; sold eleven yards of muslin de laine, on 23d November at twenty cents a yard, coming to \$2.20. There was no other cash sale that day, of that kind of article; made the memorandum of it at the time; cannot tell to whom it was sold, nor the time of day; from the position of entry, should infer that it was in the latter part of the day.

IN REBUTTAL.

Joseph Sanderson. Am a police officer of Cambridge.

Mr. Sohier. We should like to be informed, to what point this witness is called, for the purpose of rebutting; to know if the evidence is admissible.

Mr. Bemis. We intend to show by him, where the defendant was, on one of the nights subsequent to the 23d, when he attempts to account for himself.

Mr. Sanderson. Have known Dr. Webster for four years; saw him late one night, between Sunday and Thanksgiving, of the week succeeding Dr. Parkman's disappearance in Harvard square, in Old Cambridge, close to the colleges, where the omnibusses stop; saw him get out of the "Theatre," or, late omnibus, there one night between 11 and 12 o'clock. No one was with him; and no other person; though others got out at the same time; was standing near the omnibus when he got out, and I turned and followed him in the direction of his house; don't recollect seeing him after he passed Graduate's Hall.

Am a watchman, and was on duty at the time; met Mr. John Bryant, another watchman, directly after Dr. Webster passed,

and made some remarks about his passing. Dr. Webster passed near enough to me to have touched me if he had pleased.

I first mentioned the fact of seeing Dr. Webster on Saturday-after his arrest, to Mr. Bryant; talked over the fact of our seeing him, but did not specify the night; can't say that it was not Wednesday night; am confident that it was after Dr. Parkman's disappearance. It was not Thanksgiving night, for that was pleasant. This evening, there was a moon, but it was a little hazy, so that a person would not cast a shadow.

Followed Dr. Webster some considerable distance in the direction of his house. I did not speak to Dr. Webster. I know him.

Daniel Harwood. Am a dentist in this city.

The Counsel for the defense inquired as to the rebutting character of the proposed testimony.

The Attorney General replied that the prosecution expected to prove, by this witness, and other dentists, in opposition to the testimony of Dr. Morton, that there were marks of identification about mineral teeth, which would enable the maker to re-

cognize his own work; and also, that there was a peculiarity about Dr. Keep's work, in particular, which made it distinguishable from other dentists. The COURT deemed the evidence competent.

Mr. Harwood. I have resided and practiced dentistry here since 1829; am a member of the Massachusetts Medical Society, and one of its counsellors; was one of the first who did anything extensively in this city, in the manufacture and setting of mineral teeth.

A dentist would be as able to recognize large cases of his own manufacture, as a sculptor the product of his own chisel, or a merchant his own handwriting. By "large cases," I mean, where there are several teeth, or several blocks of teeth, all connected together upon one plate. A dentist cannot recognize single teeth, except from their composition; but in teeth in combination, there are characteristics of form and arrangement, by which he is able, to recognize his own work; could not always identify Dr. Keep's work, but can, usually. Dentists often examine other work than their own, expressing an opinion as to the dentist. I frequently say to patients, "This is Dr. Keep's work," or "Dr. Flagg's work," or "Dr. Tucker's work." When teeth come into my laboratory of others' manufacture, the makers are recognized by my assistants, as well as by myself.

(The blocks of mineral teeth found in the furnace were exhibited to the witness, and he was asked, If he could identify them as of Doctor Keep's manufacture?)

Mr. Harwood. These are cov-

ered with foreign substances, and somewhat changed from their original appearance. Some other dentists in this vicinity, use the same material for the composition of their teeth as Dr. Keep. Dr. Keep's teeth appear to have but very little, if any, pipe clay, in their composition; feel confident that these are of Dr. Keep's manufacture. The block is certainly in his style; he does not separate the teeth down to the gum, as I, and many others do. If I had made such a block of teeth as this, and had the mould, I think that I could recognize them; and that Dr. Keep could not be mistaken, in saying that he could identify them.

Cross-examined. The block itself has a peculiarity such as I never saw; a projection below the molar teeth, amounting to an extraordinary absorption. From this, as well as the general workmanship and style of making, should know them if they were mine. The material is not peculiar; the peculiarity consists in the composition of the block. I never saw an absorption like this. I think that Dr. Keep could not have been mistaken.

Joshua Tucker. Am a dentist in this city; have been in practice twenty-one years.

[The teeth found in the furnace were exhibited to the witness, and he was asked, If he could observe upon them any means of identification?]

The left lower block affords as complete a means of identification, and the maker could as certainly recognize it, as the artist who has spent a week studying a face and painting it on canvas, can tell that the por-

trait is his work, wherever he may see it.

Williard W. Codman. Am a dentist, and have been practicing seventeen years.

[The blocks of teeth were here exhibited.]

Think that the dentist who made them could identify them in their present condition, from the workmanship and materials.

Benjamin H. Todd. Was present at a conversation at the toll house on Cragie's bridge, the Sunday succeeding Dr. Parkman's disappearance. Mr. Littlefield and myself were going over to East Cambridge.

Mr. Littlefield asked the toll man if the policeman had been along over; and he replied, that there had been some by, but that they had gone back again. I asked the toll man if he was the person who saw Dr. Parkman pass over, in company with an Irishman; and he replied that he was not; but that it was the young man who had gone to tea. Mr. Littlefield remarked that he was concerned, or employed at the college; and one of us spoke of the report that Dr. Webster had paid Dr. Parkman money. Mr. Littlefield then said that he saw Dr. Parkman coming towards the college, Friday afternoon; and that is all I recollect of his saying about Dr. Parkman.

Isaac H. Russell. Am a dry goods dealer, of the firm of Jacobs & Co., Boston.

Know Mr. S. A. Wentworth; have no recollection of walking with him, or being in his company, Friday, Nov. 23d; think that I have been in his company, once, when he pointed out Dr.

Parkman to me; but I don't recollect how shortly it was before his disappearance. It might have been one day, or three months before. If it had been that day, think that I should have recollected it; heard of Dr. Parkman's disappearance, shortly after it occurred; can't tell the day, but I saw advertisements in the newspapers about Dr. Parkman, and didn't then recollect having seen him; have no recollection of the place where I was with Mr. Wentworth when we saw Dr. Parkman.

Cross-examined. Know Mr. Wentworth and sometimes walk with him; have no doubt that I should have remembered the fact of seeing Dr. Parkman, if it had occurred about the time of his disappearance; don't recollect when, where, or how, I first heard of his disappearance.

The *Attorney General* stated to the Court that there were some four or five witnesses who had been summoned on the part of the government, whom he wished to call to show that there was a person about the streets of Boston at the time of Dr. Parkman's disappearance, who bore a strong resemblance to him, in form, gait, and manner; so strong, that he was approached and spoken to, for him, by persons well acquainted with Dr. Parkman.

Mr. Merrick objected to the evidence, as unusual in its character, and as amounting to nothing more, than that the witnesses were persons of such poor perception, that they could not distinguish one man from another.

The *Attorney General* said that the witnesses for the defense had been allowed to testify to seeing some person whom

they believed to be Dr. Parkman, but to whom they had not spoken or offered to speak, while in the present instance, the witnesses had addressed, or been upon the point of addressing, the supposed Dr. Parkman, and then discovered their mistake.

THE COURT deemed the evidence incompetent; the Chief Justice remarking that there would perhaps be no objection to the introduction of the very person supposed to resemble Dr. Parkman, but that this testimony of the resemblance of an un-

known stranger, was quite too remote and unsatisfactory.

George W. Fildes. Am keeper of the toll house on Cragie's bridge; recollect when the clock was put up on the Court House at East Cambridge.

It has not kept accurate time. It has often stopped, and does not agree with other clocks.

Samuel D. Fuller. Am toll keeper on the Cambridge end of the West Boston bridge; have observed the Court House clock at East Cambridge. It has not been an accurate time keeper.

CLOSING ARGUMENT OF MR. MERRICK.

Mr. Merrick. I need not say to you, gentlemen, with what feeling of embarrassment I rise to address you, at the close of this protracted investigation. I cannot be more sensible than you are, of the difficulty to be encountered in the examination of so much testimony, or of the interest there is that all this testimony shall be rightly understood, and the consequences which properly ensue from it be rightly deduced. A case, gentlemen, is presented to you, transcending in public interest any that has heretofore occupied the attention of our judicial tribunals. A few months since, a well-known and highly respectable individual suddenly disappeared from this city. His disappearance was followed by inquiries broad, extensive, almost universal. An individual connected with a family well known in this community—himself connected with large and great interests in it—who had been accustomed, day by day, and month by month, and year after year, to mingle freely in the community—without any known cause, was lost.

His friends, naturally, inevitably, took the deepest interest in his discovery, and in his recovery. They enlisted the entire official force of the community in their service. Much more than that! They enlisted the entire sympathies of the whole community. When all inquiry, and all investigation, and all effort, seemed to be utterly baffled, and there was no hope

left, and there was, in reference to this individual, one universal darkness, a sudden and astounding notice fell upon us all. The mangled remains of his dead body, it was believed, were found. The perpetrator of the awful crime, which brought that body to the condition in which it was found, was said also to have been detected; and that individual was one who, in the ordinary course of things, would have been no more suspected of such atrocious criminality than you, or any one of you or of us who are engaged in this present trial.

That discovery, gentlemen, so astounding, so overwhelming, was instantaneously followed by a disclosure to the community, in every form in which disclosure can be made, of the various circumstances tending to establish the facts, that these remains which were found were the remains of the body of Dr. George Parkman, and that the prisoner at the bar was connected with the scene of his death. Incident after incident was communicated to the public, and everything which could bear against this unhappy prisoner was spread abroad, as it were, on the wings of the wind. Every sheet that was published—every hour that passed—gave new tokens to the community, at once of the death of Dr. Parkman, and, as it was supposed, of the guilt of this prisoner.

In the meantime, gentlemen, the prisoner now at the bar was in the cells of your prison, a silent sufferer. While every incident tending most unfavorably to affect him was the subject of daily communication and discussion abroad, he was alone, and without friends, and without help, to repel these accumulating circumstances of the charge against him. Gentlemen, he waited not only in silence, but in hope and in confidence. He sent forth no appeal to the community. He suffered these communications of which I have spoken to be spread broadcast through the community, till the voice of the echo, returned from the most distant parts of our country, and from other lands, without ever once asking this community even to suspend the formation of their judgment. He waited, gentlemen, in silence, and in hope and in confidence, because he had lived long in our midst, and knew who were finally to

be his judges. He knew that a time was coming, when passion would subside, when prejudice would give way, when calm reason would intervene, and his country would try him fairly, in the midst of her tribunals of justice.

That hope and that expectation are not disappointed. He never asked, gentlemen of the jury, one hour's delay of this investigation; but so soon as it was the pleasure and convenience of the government, consistently with the arrangements of this court, to enter upon this trial, he was prepared;—not prepared, gentlemen, by a series of experiments and investigations, which he could make in his silent and solitary cell—but prepared in that consciousness which enabled him, or would enable him, to come before a jury of his country, and say, whatever might be the appearances against him, he could confidently trust at once his cause and his life with an impartial jury, under the instructions of a learned and impartial court.

Gentlemen, it is impossible that you yourselves did not know much of this cause, before you took the seats you now occupy. It is impossible that you have not, in one form or in another form, heard much of that which has been detailed to you in the evidence which the government have produced upon the present trial. And yet, one and all of you, under as solemn responsibilities as can be imposed upon you, have declared that all those circumstances, and all the comments which may have been made upon them, created not only no prejudice in your minds, but not even a bias, against the prisoner. And if, gentlemen, these circumstances, though known as well before as since this trial, could not then produce even so much as a bias on your minds, I have some ground upon which I may estimate the effect which this same evidence, now presented in a judicial form, is entitled to produce, on the same minds.

What, gentlemen, is the charge that the government have made against the prisoner—what is the issue to be tried, and what the proofs by which that issue is to be determined? The government charge that, on the 23d of November, 1849, George Parkman was murdered by the prisoner at the bar. In vari-

ous forms, such as the officer of the government chose to make, upon the investigation which took place before the Grand Jury, the charge is presented, in the indictment upon which the prisoner is now tried.

It has been stated to you, that it is competent for the government, or the officer of the government, in preparing an indictment, to present the charge in various forms; because, upon the trial—the final trial—some difference of evidence may render the different statement of the particular grounds of the charge essential. It is competent, and the government have availed themselves of that competency, to present different counts. I do not now speak, gentlemen—it is not necessary that at this moment I should—upon the different manners in which the government have, in this indictment, charged this defendant with this crime. Enough, that the defendant is on trial for his life, charged with a capital offense.

To establish this charge against the defendant, there are certain facts which it is indispensable that the government must prove. They must prove the death of George Parkman. They must prove that his death was by the agency of another person. They must prove that the prisoner at the bar was that agent; and that, in causing the death of George Parkman, he acted with malice aforethought. If any one of these facts is not proved, the government cannot claim nor ask for a conviction. Unless the death is proved, and that it was by the agency of the individual, they can have no ground of conviction. Unless they show that the death occurred, and by the agency of the defendant, and that it was also with malice aforethought, they can have no verdict for murder, but may have a verdict for a less offense—for manslaughter.

These facts, then, gentlemen, which the government must prove, they have undertaken to establish by much evidence. Time has been exhausted to an unusual extent,—not to an unnecessary extent, but to an unusual extent,—in gathering together the facts which are called the proofs in this case against the prisoner at the bar. Though, gentlemen, we have spent

day after day, not one single fact is proved which comes directly to any one of the great facts which the government are bound to establish. By no direct evidence is it shown even that Dr. George Parkman is no longer in the land of the living; by no direct evidence that he was slain by the agency of another human being. By no direct evidence is it claimed that it is shown that the defendant had any direct agency in causing or procuring that death. But every one of these facts is sought to be proved by collateral circumstances; thus asking you to say that certain facts, which are not proved, are known; and from those facts you may draw, by inference, those other facts which are yet unknown.

Let us see, then, gentlemen, precisely what the proposition of the government is, let us see precisely what the prisoner at the bar concedes; and then we shall find the precise issue to be tried, and the question which you, upon your high responsibility as jurors, are called upon to determine. The precise proposition which the government undertakes to establish, by the indirect testimony which the counsel has introduced here, is, that on the 23d of November, 1849, Dr. George Parkman, between the hours of 1 and 2 o'clock, entered into the Medical College, and had an interview there with the prisoner at the bar; and that he never left that building—that he and the prisoner never separated; but that, shortly afterwards, the body of Dr. Parkman was found dead in the same building. This is the proposition which the government undertake to establish. Mark, gentlemen, that the government do not undertake to establish, nor is there any evidence in the case from which it is by possibility to be inferred, that these parties ever met again. If they separated there, there is no proof that they have seen each other since. None, gentlemen! Unless George Parkman was the victim of violence then, there is nothing to connect his death with the hand of the prisoner at the bar. This is the proposition of the government.

What does the defendant say? He concedes that which he has always stated, that at half after 1 o'clock, on the 23d of November, 1849, there was an interview at that college, for a

specific purpose, between him and Dr. Parkman; that that specific purpose, was then accomplished; and that Dr. Parkman then, in life and in activity, left that building, or at least the room in which the interview between the parties then took place. That is the proposition of the prisoner at the bar, whose life is in your hands,—that Dr. Parkman left this building, after a short interview of half a moment, at half after 1 o'clock. That is all the prisoner at the bar concedes. Beyond that, he denies everything. And if the government will have it that George Parkman was in that building, or in that room, at a later hour than that, they must prove it. The prisoner concedes no time to them at all. It was half after 1 o'clock, as he says, that this interview took place, and it terminated then.

Now, gentlemen, we stand upon these two propositions, which make the issue between the government and the prisoner. Whether Dr. Parkman did, in fact, leave that building or not, is to be determined. We are to examine all the evidence which is in this case. To show that he did not leave this building—that he was slain there—that the interview terminated in the death of Dr. Parkman—they must prove that he never left that building. All the evidence of the government is in the case.

I do not mean to say to you, gentlemen, by any means, that this mass of circumstantial evidence that the government have brought in here has not a tendency, or, if you please, a very strong tendency, to show the truth of the fact charged upon the prisoner, without explanation, and without further examination, and without the closest analysis. That would be saying more than any one could assert, after this long chain of circumstances has been presented. If it did not have such a tendency, the Grand Inquest would have found no indictment, and we should have had no trial. It is because it has such a tendency that it is here. And it is for you to say that this tendency is such as to produce irresistible conviction upon your minds. If it does not, the prisoner is entitled to an acquittal.

On the other side, we have undertaken to satisfy you, by

proofs, that Dr. George Parkman did leave this building, and was abroad in various parts of this city at a late hour that same day. Suppose, gentlemen, that you shall be satisfied of this latter fact. Suppose that the evidence in the case shall convince you that Dr. Parkman separated himself from Dr. Webster, and went his way, where he would. In the absence of all evidence that these parties ever met again on earth, there is no proof that Dr. Parkman came to his death by the hand of Dr. Webster. Say, if you please, gentlemen of the jury, in this state of things, that the remains found on Friday, the 30th of November, are the remnants of the body of George Parkman. Say that there are proofs, conclusive proofs, for the purpose of this argument, that he was slain by violence. Say, gentlemen, further, if you please, that we cannot tell, except by this connection with Dr. Webster, how all these things were brought about. What is the conclusion? Why, gentlemen, simply this: that if these parties separated once, and there is no proof that they ever met again, there is behind it all one great, inexplicable mystery—that, with all our efforts,—earnest, zealous, persevering,—these facts of human life have baffled human reason and human investigation; and that is all.

And so, gentlemen, is the every-day experience of life. It has been said that realities are stranger than fiction. The imagination cannot keep pace with the extraordinary events of life; and there are mysteries in the order of Providence, and in the course of human life, which human reason cannot fathom—which lie deeper and lower than the human mind can sound.

Then, gentlemen of the jury, if these parties separated—although it may be that the remains of Dr. George Parkman were found lying in dishonor under the foundations of the Medical College—if these parties separated, then there is no proof; none that touches, or can touch, the life of the prisoner at the bar; none that can connect him with the sad events which transpired on, or immediately after, the 23d of November.

And how, gentlemen, does the proof stand? Did they separate, or did they not?

We have called, gentlemen, several witnesses of respectability—inhabitants of this community—to testify to you upon this subject. See the condition in which Dr. Webster has been placed in reference to the discovery of the witnesses! Alone in his cell, with no great, opulent family around him, of large connections, to aid and assist him—with a wife, and the three daughters whom you have seen upon this stand, occupying his mansion in a neighboring city—these witnesses have sprung up, as it were, by their casual recollections; and we have been enabled to discover these proofs, and bring them to your attention.

Gentlemen, the number of witnesses is not large; but, contrasting it, even in this aspect, with the number of witnesses whom the government, with all their search, with the aid of the municipal government here—its police officers searching night and day, their agents employed tracking Dr. Parkman's footsteps—compare the number of witnesses we have brought here, who have seen Dr. Parkman in the afternoon, with the number whom the government brought here, who saw him in the morning, when he was engaged in his ordinary pursuits—and, even in that light, our proof does not stand in a disadvantageous position, in comparison with that of the government.

We have presented to you the testimony of Mr. Thompson, Mr. Wentworth, Mr. Cleland, Mrs. Greenough and Mrs. and Miss Rhodes. We have called also before us Mrs. Hatch. I shall not, at this moment, dwell upon the testimony of Mrs. Hatch. She testifies—to speak simply of her testimony—that, at a quarter before 2 o'clock, on Friday, the 23d of November, she saw Dr. Parkman in Cambridge street, going toward Court street. At ten minutes before two, according to the government's testimony—that is, five minutes after he was seen by Mrs. Hatch—he was seen going to the Medical College; and that he turned from Cambridge street into one of the streets leading to the Medical College, furnishes the explana-

tion that the government may give to this. Of this testimony I shall have occasion to speak hereafter, in a connection of the highest importance, most pregnant of suggestions, and worthy, as I think evidently will be found, of the highest moment and consideration.

But, passing from her testimony to the testimony of others, Mr. Thompson says that he came in from Cambridge that afternoon, and that about twenty minutes after 2 o'clock, at an hour confessedly much after Dr. Parkman entered the Medical College, he met Dr. Parkman in Causeway street. He knew him very well. He had seen him many times before. He had known him ten years. For the last five years, as a clerk in the Registry of Deeds, in East Cambridge, he had had occasion often to see Dr. Parkman; and he knew him, I suppose, vastly better than I know any one of you. He knew him perfectly well, as he says. He asserts that he passed Dr. Parkman, that he recognized him, and passed his way; that he transacted his business, and returned home. If this is true, these parties did separate. Why is it not true?

I did not know, from the cross-examination, but that an attempt would be made to show that this witness had given, at another time, a different account—said something which would be calculated to create a distrust of the accuracy of the statement which he has given here—that he had made a different statement somewhere else. And when the Attorney-General cross-examined that witness from a paper subscribed to by that witness, I did not know but what you thought that the paper did not conform to his testimony here. The witness stated how that was. Mr. Andrews asked him to write down the testimony in the rough. He did so; and the paper is not produced. And we may fairly infer from this, that there is nothing in the paper which could conflict with the credibility of this witness. He stands in this position: He is the clerk in the Registry of Deeds' office, at East Cambridge. He has been employed there many years. He was fully acquainted with Dr. Parkman, and he swears to you that he met him at twenty minutes past 2 o'clock.

I do not suppose that this witness is to be discredited upon a part of the ground of the cross-examination. This biological state, of which he speaks, is nothing. We all know that many individuals have their belief, which seems strange, and fantastical, and groundless, but which they, in the utmost sincerity, adopt for themselves. Yet, because they adopt these strange beliefs of theory, we cannot say that they are not sincere. More frequently they are the most sincere, and they adopt them on this very account. They adopt them, not to make themselves agreeable by falling in with the common tone of society; but they adopt them from conviction, because they believe them to be true. And whether the world says yea or nay, in all truth and integrity, they feel bound to adopt and promulgate them. This is the position of this witness. There is no attempt to impeach him. They have not attempted to disparage his visual organs, and he swears they are good; and he also swears that he saw Dr. Parkman in Causeway street at a time which is incompatible with the proposition upon which the government rest this prosecution.

Mr. Wentworth, a witness probably well known in this community—a man whose personal appearance upon the stand certainly entitles him to a favorable consideration—testifies, that in the afternoon of the Friday of the disappearance, between the hours of half after two and half after three, he met Dr. Parkman in Court street. The witness was walking with Mr. I. H. Russell. He saw Dr. Parkman approaching, and, at the point of meeting, he crossed from the right hand side to the left hand side of the street; and, as he crossed over, he saw Dr. Parkman was coming; that Dr. Parkman turned round, placing his hand under his coat; and he mentioned it, at the time, to Mr. Russell. He says he went to his dinner, came back, and waited there till his young man—who went at 2 o'clock—returned; and that he thence went to the market, to purchase his provisions for the succeeding day; and that he knows that he did it upon that day; and that he knows that he did not do it at any other time. And he fixes it by saying that on Saturday his business required him to be at

his store at a later hour than on any other day. He was informed by his wife that two men came to his house to inquire for Dr. Parkman, who was missing; and he immediately said to his wife, "I do not think Dr. Parkman can be far off, for I saw him yesterday afternoon." Now, gentlemen, if this is true, here is evidence inconsistent with the theory of the government.

The only circumstance which has been interposed here, to affect the testimony of Mr. Wentworth, is that Mr. Russell has been called, this morning, and testifies that he has no recollection of that event—none at all. He remembers now, that at some time he was walking with Mr. Wentworth; that they met Dr. Parkman, and that Dr. Parkman was spoken of to him by Mr. Wentworth. But the time when it was has faded from his recollection to such an extraordinary extent, that he told you he could not say whether it was one day or three months before the disappearance of Dr. Parkman. It has faded entirely from his recollection. He remembers nothing at all about time when, or place where; but he remembers simply the fact that it did occur. He says, indeed, that if it had been on the occasion mentioned by Mr. Wentworth, he thinks when the disappearance of Dr. Parkman came to be spoken of, he should have recollected it. It may be so, or it may be not. We cannot explain the workings of our own minds.

I put it, gentlemen of the jury, to your experience. We are engaged in a vast number of occupations. We see a vast number of individuals. Crowds pass in the street. A casual observation is made. We speak to this friend and to that; and there being nothing to impress it upon our mind, no impression is made—no process of association can bring it back again.

And I put it to you, gentlemen of the jury. You have been separated from your fellow-citizens many tedious days. Throw back your recollections to the day of your separation, and answer to your own consciences and your own understandings, individually, whether you can now account to yourselves, or to anybody else, all the persons whom you saw the day before you came, and the conversations that took place. The impor-

tant transactions of that day are stamped upon your minds; but the unimportant, the transient ones, are gone, gentlemen, with the air that you breathe. And so it is with Mr. Russell. The thing was of no consequence. It passed out of his mind; so utterly passed out of his mind, that time, place and circumstances, are gone, and all that he can bring back is, that, some time or other, something of this sort took place.

But Mr. Wentworth, on the other hand, an unimpeached, and I stand here to say an unimpeachable witness,—with a responsibility which touches this government, a responsibility for which he is to answer here and hereafter,—stands here to say that he knows when it was; that he has always known it; that this fact did make an impression on his mind; that he found the trace of it, at the moment when he knew that Dr. George Parkman was lost; and that he not only recognized that trace then, but that he gave audible utterance of it at the time. Such, gentlemen, is the testimony of Wentworth, and such the position he occupies.

We come, then, gentlemen, to the testimony of Mr. Cleland, the witness from Chelsea, a man of intelligence; and one would think, from the account he gave of the pursuit in which he was engaged on the afternoon of the 23d of November, connected, as he is, with valuable institutions, and a man of standing and substance in the community, that he would be a witness entitled to your most implicit confidence.

Mr. Cleland tells you, gentlemen, that on the morning of that day, he, as a member of a religious society in Chelsea, as an agent acting in its behalf, was taking measures to secure the attendance of a clergyman upon the next Sabbath morning; that he wrote a note to one of his friends, and that that note was despatched, but returned to him unopened; that he had occasion to write another to one of his friends, to which he received an answer. The note returned was thrown into his desk, and those notes can now be produced. They are on the table, and can be presented to you the moment the Attorney-General is willing.

He knows this was Friday, from the business in which he

was engaged, from the time in which he did that business, and from the notes which were written,—one of them by himself, and the other by a clergyman, a friend of his,—both of which notes he offers to produce, to fortify his recollection. He says that in the afternoon he had occasion to go to Franklin street, to meet a clergyman; that he passed through Devonshire street, Theatre alley, into Franklin street; saw his friend; had his communication with him; and then immediately passed into Washington street; and in that street, between Franklin and Milk streets, at an hour which could not vary much from twenty minutes after three, he saw Dr. George Parkman coming towards him. He saw him under circumstances which particularly attracted his attention. He thought them a little peculiar. He knew the position which Dr. Parkman occupied in society; that he was a man of affluence and wealth. He saw him walking with a laboring man, in his common and ordinary dress. In consequence, he watched him. He discovered that they separated, and that Dr. Parkman was not walking with this individual, as he thought he was. He kept his eye upon him, and they pass side by side. He saw him at a distance of four or five rods, and saw him when they met and passed each other.

About the time there can be no question. About the place there can be no question. It was Friday, the 23d of November, twenty minutes after three, in Washington street, between Franklin and Milk streets. Was it Dr. Parkman? Mr. Cleland knows him as well as you know his Honor on the bench. He had known him for years. His attention was particularly attracted towards him. It was fixed in his mind. And when he came to know of the disappearance of Dr. Parkman, he communicated it to the government, and was told that it was of no consequence to inform the police of it, because Dr. Parkman had been seen on Washington street, at the South End, afterwards. Here is a gentleman, beyond all doubt and suspicion, who tells you that he saw Dr. Parkman at this hour.

Then, gentlemen, there is the testimony of Mrs. Rhodes and

her daughter. They say that on that afternoon they visited this part of the city. They came from the westerly part of the city, where they reside, to do some shopping for the family. Among other places, they went to Hovey & Co.'s store, in Winter street, and there purchased a dress. The number of yards and price were given; and going to Mr. Hovey's, it is found that on that day there was sold this article, precisely at this price per yard, and precisely this price in the aggregate, and that there was no other such sale as that on that day!

I suppose that no one in his senses will question that this dress was purchased, and that they went home. Mrs. Rhodes says that the bundle was carried by her daughter; and the daughter says she carried the bundle, and as she passed Dr. Parkman, she shifted the bundle onto the other arm, in order to avoid striking him with it. I suppose there is no doubt but that they passed an individual who they say was Dr. Parkman. Mrs. Rhodes says that she was acquainted with Dr. Parkman, and had been for many years. She was a member of Dr. Francis Parkman's church, and knew the brother in the pulpit and the brother in the world—the one as well as the other. She says that this acquaintance between them was such that they always bowed to each other as they passed; and, as she came up to this gentleman, that she did bow to him, and that he recognized her, and returned the bow. The daughter says that she noticed what took place; saw Dr. Parkman; knew who it was; saw him bow to her mother, and saw her mother bow to him. It was Dr. Parkman. They both tell you so, upon all the responsibility which can rest upon any individual in society. They have much at stake. They know perfectly well the importance and the materiality of this testimony of theirs. They know, gentlemen, that it contravenes the hypothesis of the government. They know that it comes in opposition to views now taken, and now held, not only by the government, but by the family and friends of Dr. Parkman; and Mrs. Rhodes, a woman of unblemished reputation, and unsuspected character, knowing full well how this thing is

held out to the family, how her friends think in relation to this matter, that she is laboring under a mistake, has dwelt upon it with all hope and all desire to come to the truth; and she asserts, that she must now say, let the consequences be what they may, that this man whom she met at that time was Dr. George Parkman. Do you know that it was not?

Another witness, Mrs. Greenough, says, that on the same day, ten minutes before 3 o'clock, she met, as she believes, Dr. Parkman, in Cambridge street. She is a woman of much respectability, as I venture to say any of you will admit. She had occasion to come into the city on an engagement of a social character. She had occasion to see her son, who left his home at 3 o'clock. She says, that, as she was coming through Cambridge street, making no particular observation, she saw her old acquaintance, Dr. Parkman, on the other side of the street. She recognized him, passed on, and looked at the Lynde street church. She fixes the hour, and the time and place. She does not state as strongly as the other witnesses that the person she saw was Dr. Parkman; but she believed it then, and believes it now. She would not say, in dogmatical language, that it was not possible for her to be mistaken.

On the next day, her husband informed her that Dr. George Parkman was missing. She immediately said, "I saw Dr. George Parkman yesterday."

This, then, gentlemen of the jury, is the testimony upon which we rely to convince you that Dr. George Parkman did separate from Dr. Webster; that Dr. Parkman went from that college, and was abroad in various parts of the city. During the afternoon of that day, he was seen in different, and, to some extent, in distant parts of the city. He did not return to his family, and that is strange. He was never seen afterwards; and that is strange. Something intervened that day that was very strange. Something occurred that day which we cannot understand, which we cannot reach or know. What that was, who can tell? Can you, upon the evidence which has been presented to you?

When his friends made first a comparatively slight and

fruitless search, they gave notice to the world that they put their minds upon causes which might produce a strange effect. And it is neither uncharitable, nor unjust, nor unreasonable, to suggest to you now what upon the greatest deliberation was suggested by his friends then. We start no new theory; but we take up the theory of his friends, those who knew him best. They say, in the advertisement which they put forth to the community, that he might have strayed away, under the influence of some sudden aberration of mind. They thought that reasonable, or they would not have said it. They would not have put forth a suggestion of that sort under a reward of \$3000, without believing it. And yet they did it. We cannot tell whether it were so.

We know that responsible, unimpeachable men and women, with organs of vision capable of determining this question, did see this man abroad. Who can say that that is not true? The suggestion may be, that they are mistaken. They may be mistaken, but are you certain that they are mistaken; so certain, gentlemen, that these men and women are mistaken, that you dare touch the heart's blood of this man who is upon trial?

Gentlemen, contrast this proof with some other that has been presented here. When the mangled remains of this human being, whosoever he was, were spread out on the floors or on the tables of this Medical College, and exposed to medical gentlemen and friends, they were asked to view, and see if they could find anything dissimilar to the frame of Dr. Parkman. And they bring the answer to that question here as a fact, from which you are to draw an inference. Yet, in the same moment that they are asking you to systematize the evidence which they present in regard to the want of dissimilarity in these remains, so that you can draw such a conclusion as that,—they are asking you to believe that responsible men and women are mistaken, not in the naked leg, but in the open face, the open, clear living peculiarities of the living man. What are we here for? What is your solemn duty? To weigh all the evidence;—not a part! Not to take up the

system, the theory of the government, and see whether the evidence of the government will sustain that theory; not to see whether the evidence which they produce tends to establish that hypothesis. It may be that all the facts they maintain should exist, and yet that the prisoner at the bar should have had no hand in the atrocious perpetration of the murder, because they parted after the interview had taken place between them. I commend it, gentlemen, to your sober consideration, that you have, upon this question, as solemn a responsibility as ever rested upon the consciences of human beings.

Gentlemen, I shall proceed to the examination of the testimony which the government have brought to your consideration. And I mean, gentlemen, to treat that testimony with all the fairness of which my mind is capable, in examining or in presenting it to you. I do not feel, gentlemen of the jury, as if I was here in strife or in contest with you, or with any one. I do not feel, gentlemen, as if I was here in strife or in contest with my friend, the Attorney-General. We come here, not to contend for victory, but to learn the truth, to vindicate justice, to administer the law. And when I speak to you, I do it in the hope that I may aid you in the great duty, the solemn duty, which you have to perform. If I sometimes speak earnestly, from deep convictions, I know that you will not understand me as fearing or apprehending that I have anything to overcome, any resistance to be encountered, any opposition to contend with. No: you are my friends—the friends of the prisoner at the bar—as you are the friends of all men in the community of which you are brethren with them.

Let us look, gentlemen, to the facts, in the order in which the government are bound to prove them, and see how far their evidence, direct or circumstantial, tends to prove their case. The government must prove the guilt of the defendant. I say they must prove it. The burden of proof is exclusively upon them. If they do not establish, beyond reasonable doubt, the several facts which they are bound to prove, they cannot claim nor ask for a verdict of conviction.

The law presumes that the prisoner at the bar is not guilty, unless it is forced upon the minds of the jury, by a just consideration of the evidence brought against him. And it is upon these two great and leading presumptions of the law, that the defendant is innocent until his guilt is proved by the government, and proved beyond reasonable doubt, that I approach towards the consideration of them.

They are, first, to establish the death of Dr. Parkman; secondly, to establish that his death was occasioned by the agency of the defendant. First—have they proved to your satisfaction that Dr. Parkman is dead? They have much evidence, certainly, tending to establish this fact. And I wish to state that evidence to you, with the single remark, that it is for you to pass upon, before you can proceed into the investigation of the other more material parts of the case.

Dr. Parkman entered the Medical College on Friday, the 23d of November; and since that day he has not been seen. To show that he is dead subsequent to that day, certain remains of a human body are found, and evidence has been given to you, in reference to those remains, tending to show the identity of that which has been found with that which was lost—tending to identify the dead with the living.

In the first place, gentlemen, there were remains found in the vault beneath the privy, other parts in the tea-chest, and still other parts of a human body in the cinders of the furnace. Intelligent and most respectable gentlemen have been called here to testify with regard to each and all the parts of this body. Dr. Wyman, who has exhibited much skill, much science, much knowledge in his profession, has stated to you that the bones—the fragments of bones—which he finds, corresponds with, or belong to, parts of a body which were not found in the tea-chest or vault. And he states that these fragments of bones constitute part of the head, neck, arms, hands, feet, and one leg below the knee; and that there was among these fragments nothing duplicated; no fragment which must necessarily have existed in two human bodies; no

fragment which could have existed in any part of that found in the tea-chest and vault.

Now, upon this testimony, you are to consider; and I have no doubt of the result to which you will arrive. If all these fragments did constitute the parts of one human body, in different states and in different conditions, the inquiry then is, were those remains the body of Dr. Parkman, or not? And upon this point, certainly, you have strong proofs—perhaps entirely decisive; but of that you must judge.

You have the testimony of these same medical gentlemen, who say that the structure of Dr. Parkman was somewhat peculiar; that these remains, examined in the best way they could, corresponded in all particulars with the body of Dr. Parkman—in the form, the structure, the size, the height, the color of the hair, the growth upon the back; certainly very strong circumstances, tending to establish a probability that this was the body of Dr. Parkman. And this is done, perhaps, effectually, perhaps conclusively, by the testimony of Dr. Keep, the medical gentleman who had occasion to make the teeth of Dr. Parkman three years before, who had occasion often to examine them, who has compared the teeth with the model, to which it adapts itself. He declares that he can not entertain a particle of doubt that they are the same; and these, connected with circumstances which tend to show that they were fused while in the mouth of Dr. Parkman. These circumstances are strong.

We have called your attention to the testimony of Dr. Morton, an eminent, and intelligent, and skillful dentist of this city, who has given to you clearly his views on the subject. Not that we call him to contradict Dr. Keep, but that you may understand this testimony which has been presented.

This has enabled the government to bring in Drs. Harwood, Tucker, and Codman, who have confirmed the general statement of Dr. Keep; and I have only to say that this is a question upon which you are to pass.

If you are satisfied that this is the body of Dr. Parkman,

that settles that point. If you are not satisfied, their case is gone.

What was the cause of the death?—and that is a thing which requires your particular attention. Have the government satisfied you, beyond reasonable doubt, that Dr. Parkman died by violence? I shall not now, of course, call your attention to any part of the testimony of the government by which they attempt to implicate Dr. Webster; but, taking the circumstances having a tendency to show that Dr. Parkman came to his death by violence separate from anything which implicates Dr. Webster, let us see whether it is certain, beyond reasonable doubt, that this body which was found came to death by violence.

I suppose the government will rely upon two circumstances, which have been given in evidence, as tending to show this fact; which two circumstances are quite insufficient in justifying a jury to come to such a conclusion. I refer to the supposed fracture of the skull, and to the perforation of the side. As to that portion of the bone presented by Dr. J. Wyman as having some tendency to show that there was a fracture, I have scarcely occasion to say more than to remind you that, in answer to an inquiry from the Chief Justice, Dr. Wyman said that though there was an appearance that that fracture occurred before the bone was subjected to heat, yet there was nothing which would enable him to determine whether it was before or after death. But with regard to the other question, even whether it was before or after calcination, Dr. Wyman was by no means certain that it was before it. If it had not gone so far in the calcination, then he might not have found the ragged suture, as it might have been caused by calcination.

Dr. Holmes, a young gentleman—[A voice, "Not young."] Dr. Holmes, a middle-aged, but very respectable and intelligent physician, who is old enough to have been one of the physicians in the Massachusetts General Hospital, and a professor in the Medical College, tells you that, in his opinion, this fracture was not caused before calcination; and, when asked whether he would not defer to Dr. Wyman, he says, "Not in

this particular, though I would cheerfully in others." In reference to this particular examination, he says that he has examined, and his own observation is as good as anybody's else. It is uncertain whether that fracture was before or after calcination,—whether it was before or after death,—and so it furnishes no guide to the jury, in determining whether death was caused by this fracture or not.

Next, as to the perforation in the side. It appears, from the testimony of Mr. Eaton and Mr. Fuller, that this perforation was discovered almost immediately after the thorax was taken from the tea-chest. They noticed it. If they are right, it was so. I shall not stop to question their accuracy. It was there before. But, how? Was it a cut? Dr. Woodbridge Strong testifies that it was a clean cut, made with a knife; and, in his judgment, it must have been made with a knife. on the other hand, you have the opinion of three intelligent and scientific gentlemen, called upon to make the examination of the body—Drs. Lewis, Stone, and Gay; and who made the examination with care and precision, writing down their testimony at the time, preparing to testify before the Coroner's Jury—an examination made at the moment when all inquiry was of the utmost importance—when every circumstance was sought for as a momentous matter, in ascertaining the truth in relation to this great and overwhelming calamity which had come upon the community. They tell you, one and all, that there was no knife-cut there; that it was a ragged opening; that there were no indications upon the side, external or internal, that it was a clean cut, made before or after death. Now here is a disagreement between these medical gentlemen. What are you to do? Do you know how the fact is? If you do, you can act upon your own judgment. If you do not know, but are trying this cause upon the evidence, then you have the testimony of three witnesses, that, whenever or however that hole was made, it was not made by a sharp instrument. If that is a fact, then the government are destitute of evidence to show that Dr. Parkman, if this was his body, came to his death by a blow upon his head or a stab upon his side.

How did he come to his death? Remember, it is not for the prisoner at the bar to explain how these were dead remains, but the government are to show you that a living man was killed. How was he killed? Was he killed at all? Do you find upon the person wounds, blows, and evidences of destruction, sufficient to take human life? To take a man's head off, kills him. To take his breast-bone out, and separate all the internal parts of the body, kills him; to cut off his arms and his thighs, kills him; to put his head in the fire and burn it to cinders, kills him. Was Dr. Parkman killed in any of these ways? Do you think he was burnt to death? Was his limb placed in the fire—that limb of which you found fragments—was that put in the fire till the fire scorched him to death? Was his head placed so as to be burnt alive? Nobody believes it. Do you believe that he was killed by having these two legs cut off? that he was laid upon the floor, or upon an anatomist's table, and held there until his legs were chopped off? Nobody believes that. Or, was he held there until his arms were chopped off, and all his limbs severed? Nobody believes that. That is to say, that, though you find this body mutilated—distressingly mutilated—yet nobody believes that this mutilation was the cause of death.

What, then, was the cause of death? After all the investigation which has been made, this matter is as dark as it was before light went into the cavern underneath the Medical College. How the man—ay, the victim, call him which you will—how he died, no man knows.

Then, gentlemen of the jury, are the government to ask you to say that this was a death by violence, when they cannot say how it took place. When the charge shows that they don't know, can they ask you to draw the inference that he must have been slain? Can they ask you to draw the inference from the fact, that he was alive on the 23d of November, and that, on the 30th, his mangled remains were found, that it is an inevitable consequence that he must have been slain?

Take the case which is ordinarily put of presumptive evidence, and see how widely it differs. A man is seen running

from a house, with a bloody sword in his hand. The spectators immediately pass into the house, and find a bleeding body, convincing them that there has been sudden death. Upon examining him, a wound is found upon his side, which corresponds with the sword. The inference is unavoidable, that the man has died in consequence of the flowing blood. He is suddenly found dead.

But here, the disappearance was on the 23d; the discovery of the body on the 30th, seven days afterwards; and there is nothing found but what might have been inflicted after death. How, then, is it certain beyond reasonable doubt, so that it is safe to say, "There has been murder here—that this body was brought to its death by crime and violence?" Gentlemen, death visits the human family in ten thousand forms. Sometimes its approaches are lingering and slow; sometimes it takes us suddenly by the hand, and relieves us at once of life.

Can you say certainly—have you this evidence—that, because seven days after the disappearance of Dr. Parkman, his mangled remains were found in this college, that he did not die a natural death, which might have reached him, as it often reaches the rest of the human family, suddenly and unawares?—that, in some strange way, which you cannot see, because of the thick darkness in which all human life is shrouded—because you cannot see how it is done, you will leap through the thick fog, and by circumstances almost irrelevant conclude—I mean imperfectly conclude—that death came in the form of violence applied to him?

Gentlemen, you will take care, in forming your judgments upon this matter, if one man has gone—if that man was our friend; if he was most respected in the community; if his loss has left a deep chasm in society; if his absence has touched many hearts, and he be mourned over by many friends—still, you are to remember that, before you affect the rights, the liberty, and the life of one of your fellow-beings, you must be sure that the great fact of death by violence was established.

Lord Hale said, in reference to circumstantial evidence,

that he "would never advise a conviction upon circumstantial proofs, unless, at least, the body had been found."

Gentlemen, the writers upon law, the expositors of the law, upon the bench and in the books, have declared that this same caution is equally applicable to the means of death as to the discovery of the body. When the body has been found, and can be identified, the first care should be, to see that the proof is clear that that body ceased to live by violence applied. And if it cannot be shown, by direct or by indirect circumstances, that the body came to its death by the agency of another, though strong suspicions may exist, and the greatest of jealousies may fill the minds of men, still there is a want of that perfect judicial proof, upon which men—conscientious men, acting in the discharge of their duty—are bound to proceed.

It is so here, gentlemen. I do not undertake to say to you that Dr. Webster can, or that his counsel can—supposing these remains to have been those of Dr. Parkman—explain how he came to his death. We do not pretend to do any such thing. But, gentlemen, we do pretend to say that the government must prove this fact—an essential fact in the case. And when we say that these marks might have been inflicted long after death, and that there is no evidence that they were inflicted before death—when death comes in a thousand forms: when he might have fallen by the wayside; when some robber may have seized the body, and, having plundered it, then, in the midst of an excited community, searching everywhere, fearful of discovery, have thought to have taken these remains, and placed them there—can you say that such was not the case? or can you say that these circumstances impel you irresistibly to the conclusion, that George Parkman came to his death by the agency of another person?

I submit it, gentlemen, to your calm inquiry; and if the evidence on the part of the government, upon this subject, comes only to create a strong probability, but does not come up to the clear fact, beyond reasonable doubt, that this body was slain, there is an end of this trial.

But, gentlemen of the jury, suppose that you pass these

questions by; that you come to the conclusion that this was the body of George Parkman, and that his death was caused by the violent agency of another person; what was the crime which was committed in taking his life? I shall here, necessarily, gentlemen, be obliged to anticipate; but I ask you carefully to discriminate.

I am going to attempt to show you, upon the circumstances which have been developed upon this trial—taking all the government's case, and making the worst of it for the prisoner, in their behalf—that the crime which was committed, if it was committed by Dr. Webster, was not murder, but manslaughter, because the circumstances warrant the conclusion that it was the lesser crime. Do not misunderstand me. As the counsel of Dr. Webster,—called here to protect him in this hour of peril, when his life is at stake,—his counsel do not feel at liberty to stand exclusively upon the ground upon which he stands. He denies that he took the life of Dr. Parkman. But, gentlemen, his counsel cannot know what effect the evidence which the government have presented upon that question may produce upon your minds. And, therefore, if it should come to that, that you should arrive at such a conclusion as that Dr. Webster did the deed, then, gentlemen of the jury, we must ask you to say, What was it that the prisoner did? What law did he violate? What crime did he commit? I contend that it was manslaughter, if it was committed at all.

Gentlemen of the jury, the law upon the subject of murder and manslaughter was stated to you, in the clearest and most distinct manner, by the counsel with whom I have the pleasure to be associated. The distinction is simply this: Homicide with or without malice. And we contend that the evidence in the case will warrant the jury in coming to the conclusion, that, if there was a homicide here, that if Dr. Parkman came to his death by the hands of Dr. Webster, it was under circumstances of such extenuation as reduces the offense from murder to manslaughter. You understand, that if a homicide be committed, it is murder, unless there is extenuation; that is to

say, unless it was done with sudden combat, or with justifiable provocation.

The question, then, is, if a homicide occurred, if Dr. Webster was the cause of the death of Dr. Parkman, did it occur under such extenuating circumstances as will reduce the crime from murder to manslaughter? Now, gentlemen, you will receive the direction of the Court as to what is necessary for the government to do in order to establish the fact of malice aforethought. Without malice, the crime of murder could not have been committed, in a homicide. I do not understand the case of York precisely as it was understood by the Attorney General, though I do not know as the difference is material. I understand the case of York to have the same bearing as the case of Sir Michael Foster; that, the fact of the murder being first proved, all the circumstances of extenuation, which are to reduce from murder to manslaughter, are to be established, or it is murder. The opinion put forth in the case of York, as it was applicable to that case, was on the question, whether it was voluntary or not. I do not understand that it made a difference whether it was done in secret or not; this reference to secret murder being argued by the Magistrate.

CHIEF JUSTICE SHAW. The proposition that was affirmed there is universally applied. It was, that the fact of homicide—voluntary killing by design, or by the use of a deadly weapon—having been first proved, the circumstances of justification in self-defense, or in whatever other way it may be instigated, must either be established by proof, or arise out of all the circumstances of the case.

Mr. Merrick. That is as I understood the case, and as I had supposed the law of the case would be stated to the Court.

CHIEF JUSTICE SHAW. The evidence on both sides is to be taken into consideration, and the instigating facts may arise out of all the circumstances of the case.

Mr. Merrick. That is all material to this case. Gentlemen of the jury, upon this question, whether the homicide was murder or manslaughter, if you are satisfied that Dr. Parkman came to his death by the hand of the defendant, and that he

killed him by design, then the law implies malice, or malice aforethought accompanies the act of killing by design—the use of a deadly weapon indicating design or purpose to accomplish that object.

But, in determining this question, the jury are to look at all the evidence in the case, and see under what circumstances the homicide must have been committed; and if, upon the consideration of all those circumstances, it shall appear to the jury, by a fair and proper inference from all of them, that the homicide was not by design, but was committed under extenuating circumstances of provocation, or sudden combat between the parties, then the crime committed was manslaughter, and not murder.

I suppose, gentlemen of the jury, that the government mean to put to the jury that there is evidence, in this case, of express malice. It was so stated by the Attorney General, in the opening of the case. I understand what that express malice is understood to consist in. And, therefore, before I go to the circumstances of the case, I would call your attention to the other circumstances, which go to establish the fact that there was malice prepense; that is, that this crime was premeditated—that he designed to kill Dr. Parkman, before he went into the college. That is the broad statement of the government: that Dr. Webster planned this homicide; that he devised the means; that he seduced him to the college by false pretences. The ground upon which this conclusion is based is this: Dr. Webster states, that on Friday, the 23d, Dr. Parkman met him by appointment. The appointment was to accomplish a particular piece of business, namely, that Dr. Parkman should bring to his place certain papers and notes, and that he should receive there certain money, and cancel those papers. Prof. Webster says that, following this appointment, the interview took place, and the business transaction occurred; that Dr. Parkman came there, bringing with him all, or a part, of the papers; that the business was transacted between them, and that they separated. The government deny this. They say that this business transaction did not take place; that Dr.

Webster did not pay Dr. Parkman this money. And they ask you, gentlemen, to believe and to conclude that he did not pay it, because he had not the means of paying it. And then they ask you to conclude, that, as he had not the means, and did not pay it, that this appointment was the means by which he intended to induce Dr. Parkman to come to the college.

It becomes, then, necessary to allude to the evidence of the government, in relation to this matter. They have called several witnesses. They have called Mr. Pettee, who sold Dr. Webster's tickets to the medical course of lectures; and they have shown how the money was paid by Pettee to Webster; then they have shown evidence, from the deposits in the Charles River Bank, that deposits to an equivalent amount followed the payments of Pettee for the tickets. Then they have shown either what become of these deposits before Dr. Webster was arrested, or since; and they attempted to show, in that way, that all the funds which Dr. Webster derived from the students were used in such a manner that he had none of them to pay Dr. Parkman with. The evidence seems so satisfactory, that I shall not attempt to contest it at all. I suppose it is so. Not only do I suppose it is so, but I am fully authorized to concede it was so. That was not the money paid to Dr. Parkman.

Then the government have called certain other witnesses: Mr. Henchman, who testifies that, on the morning of this day, the 23d of November, Dr. Webster presented him a check, drawn on that day, or the day before, for \$10, which Mr. Henchman cashed for him. He had funds in the bank, and the money might have been paid; and if the check had been sent over at that time, it would have been paid. There is no doubt of that fact—that Dr. Webster wanted this small sum of money for his temporary use. He was in the habit of depositing, for his daily use, in the Charles River Bank; and as he wished to use the money, he drew it out. And, accordingly, you will find that, in almost all the instances, the money was drawn out in small checks.

Then they have called Mr. Smith, to show that Dr. Webster

was unable to pay, or unprepared to pay, a small bill to him; and that Dr. Webster wrote back to him, saying that that bill should be paid when the money came in from the sale of his chemical lecture tickets. That is true. You perceive that that debt, like that of Henschman, was unpaid, on account of his daily expenses. That was to be paid from the chemical lecture fund.

We conceive that Dr. Webster wanted money for his daily expenses; and that he drew it from the source from which he was accustomed to draw all his money, and that he did not wish to appropriate this money to other uses.

Now, as to this money paid Dr. Parkman, I am free to say to you that we have not offered proof to show where it came from. And this we cannot do. Yet, the circumstances of the case are such as do not show that Dr. Webster had malice in his heart to contrive the perpetration of this most atrocious crime, for the want of this money. Gentlemen, you know now, as well as Dr. Webster knew then, that he was a debtor, and that Dr. Parkman was his creditor. You know that Dr. Parkman had made up his mind, resolutely, in reference to his debtor, and that Dr. Webster knew it too. You know that Dr. Webster knew that there had been transactions between himself and another party, which, unexplained, thrown out to the community, would touch to the core the reputation of a man standing in the position in which he did. You know that, in the exigency of the time, he had mortgaged his property to George Parkman; that consisted in part of his minerals. You know that, subsequent to that, in his exigency, he had afterwards raised \$1200 by a bill of sale of those minerals, which had exasperated Dr. Parkman, but which Dr. Webster vindicated by a long letter to Mr. Shaw, which, unhappily, is not here. Dr. Webster knew that the time was coming, and that speedily too, when he must answer to Dr. George Parkman. He knew that the time was coming when he could no longer ask for delay or forbearance, but must be prepared to meet the claim—I will not call it inexorable, but the earnest claim—which Dr. Parkman must make against him. He must be

prepared for that great day; for it is a great day with a man in Dr. Webster's situation,—with a man with a large family, with expensive habits, and an expensive condition in life. When such a man is called upon to pay a considerable sum of money, he is obliged to strain himself on that side, and on this side, and to gather in a fifty dollar bill here, and a twenty dollar bill there. And it was in this way that this money for Dr. Parkman was hoarded together, little by little, gathering it where he could, and collecting it where he could; knowing that the time was coming when he could not put off the day.

If you will examine the books, you will find, that of \$195 paid at one time by Mr. Pettee to Dr. Webster, \$150 were deposited in the Charles River Bank. All the other sums which he received from Mr. Pettee were deposited in the bank. But, of this \$195, \$45 were saved out, and made up, gentlemen, with the previous savings, the means of meeting the claims of Dr. Parkman.

In the meantime, he was subject to calls from other quarters; and though he might, at somewhat of an earlier day, have made payment to Dr. Parkman, yet, from the relation in which they were placed to each other, he was not over willing to gratify the immediate demands of Dr. Parkman, but was willing to put him off as long as he could. There was no friendly relation between them. All he meant to do was to put himself in a situation, when the time did come, and Dr. Parkman came with a pressure that he could no longer resist, that then he could meet him, pay him, and be rid of him. And that, gentlemen, is the history, as far as I can detail it to you, of the circumstances in this case.

There are corroborating circumstances, gentlemen: Understand me, that this is not gathered from imagination. Do not say that Dr. Webster, to some extent at least, is not fortified by the facts in the case. Let us see if we cannot find such facts. Remember two circumstances: Dr. Webster says that he paid \$483. Of that money so paid, \$100 was in a bill of the New England Bank. Another circumstance in this connection: Brown, the toll-man, says, that on Friday he saw Dr.

Webster passing the Cambridge Bridge, and asked him what he paid Dr. Parkman. He replied he could not tell: some large and some small amounts; some of which came from the students in the medical course. The toll-man asked if Dr. Webster could recognize that \$20 bill; said that an Irishman had offered a \$20 bill, to pay a one cent toll; that he thought it rather strange that an Irishman should have that money, and pay it for toll. And, suspecting he might have got it from Dr. Parkman, he went to ask Dr. Webster about the bills that he had paid to Dr. Parkman. He had been at the college, and spoke of this as he was passing back to Cambridge. The toll-man said, that he understood that the money came from the students. But the idea intended to have been conveyed to the mind was, not that every dollar was derived from the students, but that portions of it were. This is apparent from the fact that he had received a considerable portion at a much earlier date. A considerable portion of the money received was distributed at once: \$230 were paid to Dr. Bigelow; \$195 were received afterwards; and \$150, the next day, were deposited, as the records, the testimony of Pettie, and the bank books show. And, therefore, it is perfectly obvious, that the idea Dr. Webster meant to convey to Mr. Brown, the toll-man, was, that he could not tell, because he could not recognize the various bills that were paid, as the money came without defining the precise source. I suppose that the toll-man was the last man to whom he would tell his particular affairs.

But some of the money came from the students; on which there are two suggestions to be made.

The first suggestion is, of the saving of \$45 from the \$195. Second, that there was paid, according to the statement which he early made, the note of \$100 from the New England Bank. Mr. Pettie went to the New England Bank to get his money. He can't swear that he was paid, or that he paid Dr. Webster, in money of the New England Bank. But your personal acquaintance with such matters shows, the experience of everybody shows, that they do not pay anything but their own bills from banks. He laid this money aside, and paid it to Dr.

Parkman. He had saved the rest of the money, but with the exception of the \$100 bill, he could not identify what he had paid. He could not determine whether the \$20 bill was one which he ever had before. I suppose that he took this \$100, which he had received from Mr. Pettee, and kept it, and deposited other money in the Charles River Bank. I wish to fortify these presumptions. I wish I could go to the persons from whom he received this money. Suppose that Dr. Webster had apprized his counsel, "Why, I received such a sum of money here, and such a sum there."—a careless man in his money matters,—and that "twenty, forty, or one hundred dollars, in another place, were received"; and it should be proved not to be so—that there was a mistake about it. How hazardous a case it would be for him! Then it comes back to this course of daily savings. It appears that his situation was such as to require him to do it; that he had means, and that it might have been done. He says it was. You see, Dr. Parkman was his creditor, and his pressing creditor. The time of the lectures had come, and at that moment he must preserve his place. Dr. Parkman had him in his power. He prepared himself for the time; he availed himself of all practical means to come to it. Then see if Dr. Webster is, or is not, corroborated in his statements on this subject.

The government counsel apprized us, after all the evidence was, in, that he should claim not only that there was this money due to Dr. Parkman that Dr. Webster says he paid, but that the large note comprehended debts which were due to other parties, amounting to \$512.

Gentlemen, there is no other evidence in the case upon that subject from which the Attorney General can argue—nothing but the note and papers in the case. These notes and papers are, then, to be taken into consideration, to see whether this is so or not. Now the mere fact that Dr. Webster is found in possession of these papers would, under ordinary circumstances, create a presumption in his favor, that he was fairly, and honestly, and justly, entitled to them. And as the law presumes that he is innocent until he is proved guilty, there-

fore, this presumption exists in his favor until the government establishes the contrary fact.

Now, Dr. Webster does not pretend, and he never pretended, that he met Dr. Parkman in order to pay anything else than the small note. Now, gentlemen, if you will look upon that small note, and see how the \$483.64 is made up, you will find that it is made up by computing the interest which is due to Dr. Parkman, not to the date of payment, but to a day considerably ahead; that is to say, apparently Dr. Webster paid Dr. Parkman more than was due. How comes that? Simply that these parties understood each other, and there was some doubt about how much was due; and then there was a proposition, as Dr. Webster said to some witnesses, that when Dr. Parkman came and said, "There is so much due,"—"Yes," he replied, "that is what we agreed upon"; that is to say, they had fallen into some difficulty about it, and then had finally agreed on that amount.

Then, gentlemen, you have another circumstance. It is stated, by every one who speaks of the conversation of Dr. Webster in relation to that individual, that Dr. Webster spoke of the mortgage. He did speak of the mortgage. He says that after the money was paid—that is, the notes were cancelled—something was said in relation to the mortgage. It was rather an imperfect statement, but the amount of it was this: that Dr. Parkman said he would take care of the cancelling of the mortgage. Accordingly, you perceive that Dr. Webster did, on the next day, not only believe that the mortgage was to be cancelled, but, in point of fact, went to the city office to see if it was so. This is important, because, if you can find a basis of truth in that statement which is made by Dr. Webster at that time, it will enable you to complete the parts; just as Dr. Wyman found, from the fragments of bones which he collected, sufficient indications to determine to what parts they belonged, and to assist in reconstructing the entire skeleton.

Dr. Webster says that Dr. Parkman would see to it. You do not find the mortgage in the possession of Dr. Webster, but

it has been produced here, from the papers of Dr. Parkman, by the government. Now I think, gentlemen, that this is a strong corroborating circumstance. Look at the whole series of these business transactions. It appears that Dr. Webster was the debtor, that Dr. Parkman was the creditor; that Dr. Parkman meant to have his debt paid, at all events, and that the note must be met. Then, as to a portion of his money, you find that Dr. Webster did receive money from the New England Bank, which would correspond, in part, with the money paid; some portion of the money received from the tickets was not deposited. You find that the business transaction took place; that Dr. Parkman went down there with the expectation that something would be done. He did carry his papers with him. That took place between the parties, at that time, which resulted in this, that Dr. Webster got possession of the notes, and Dr. Parkman kept the mortgage.

Now, I put it to you, that, in this state of facts, although this is not clearly proved, yet, that the explanations are sufficient to refute this assumption taken by the government. This inference from his want of means, from the idea that Dr. Webster had not any money, and so seduced Dr. Parkman, by false pretences, to come to his place, is totally groundless. These are all the considerations that I have to present upon this subject, and I ask you to consider them. I do not say that the argument on this part is perfect; but it is for you carefully to discriminate, and to secure the truth. And consider whether it is not ample to repel that suspicion of the government, that it must have been that Dr. Webster had not any funds, and so premeditated this awful crime. I put it to you, whether it is not more reasonable, that this outline of this condition in which Dr. Webster was is true, than that a man of his standing in life should have set down deliberately the way of blood; and yet to one or the other of these conclusions you must come. And you must come to the latter conclusion, or you cannot sustain this hypothesis of the government, that there was malice aforethought, express, because Dr. Webster had not

the means of making the pecuniary payment. I beg you to weigh it well, for on it are the issues of life and death.

I wish now, gentlemen of the jury, to call your attention to those circumstances which tend to show the character of the transaction, upon the supposition—with the idea, or hypothesis—that the death of Dr. Parkman was caused by the prisoner at the bar at the time of the interview between them, at the Medical College, November 23d. And here you perceive, gentlemen of the jury, that we are under the necessity of relying exclusively upon the circumstances. If Dr. Parkman died under the hands of Dr. Webster upon that occasion, no human voice can relate to you the circumstances, except the voice of the prisoner himself; no direct testimony can come to you. Still, you are judges of the fact. And, in this instance, as in everything else in this case, you are to weigh circumstances, and deduce from circumstances the inferences which are the just and proper conclusions from the fact. Now, gentlemen, I contend that the circumstances which must have accompanied that scene of death, if death there were, must have been such as to have extenuated the offence committed, from the crime of murder to the crime of manslaughter.

What was the relation of these parties to one another, the circumstances under which they met, and from which they never separated, according to the government, both alive? You have heard of the relation between these parties, of debtor and creditor. You know that, for a long period of time, Dr. Webster had been indebted to Dr. Parkman. You know that Dr. Parkman became exasperated, to some extent, against him, in consequence of the acts on the part of Dr. Webster which Dr. Parkman denounced as unjust and dishonest. And, under that imputation of injustice and dishonesty, you know, from the evidence given, that Dr. Parkman meant to pursue, and did pursue him. I speak in terms well measured. So early as the first conversation which he had with his brother-in-law, Mr. Shaw, the feelings of Dr. Parkman were much excited against the prisoner. And I believe that, from that hour to the last hour when he was known to be in existence, that feel-

ing never was removed, but became increased. You have the testimony of Mr. Pettee, with whom Dr. Parkman held several interviews. He in vain endeavored to realize the money that was coming to Dr. Webster from his annual course of lectures. He was disappointed and chagrined. He had said to Mr. Shaw that he would have this money, and Mr. Shaw had endeavored to calm his mind. Both these gentlemen occupy a relation, in respect to pecuniary means, well understood by the community. It was not the amount due from Dr. Webster to Dr. Parkman which made the money a matter of interest or of importance. A loss of that amount would never have been felt by Dr. Parkman; and undoubtedly, under other circumstances, he would freely have parted with much more than that, perhaps to Dr. Webster himself. But there were relations between them of an angry character. Dr. Parkman, as I say, was disappointed and chagrined with his want of success with Mr. Pettee; yet he never forbore the purpose he had in his mind, to enforce against Dr. Webster the payment of this money. He did not call in the aid of the law: he did not ask for a writ, by which his property could be attached; but he assumed, by his mode, I will not say of harassing the feelings of his debtor, that he should be able to obtain this money. Accordingly, you find that his pursuit was constant, his purpose unchanged and inflexible, and his manner, I think, never calm, in relation to this matter. He sent, by Mr. Pettee, a message, which, if it reached Dr. Webster, could not but have exasperated him. That that message, or another like it, did reach him, I think you cannot question. So early as Thursday evening preceding November 23, there were irritating circumstances connected with this subject. Dr. Webster was aggravated. Probably, never a profane word was spoken by Dr. Parkman; yet, that rash language was used, and, in the common parlance, vulgar language was used, which came in some way to Dr. Webster, certainly showing that there was not a kind relation between the two, I doubt not. You see it developed in other circumstances. So early as Monday evening of that week, that fatal week, Dr. Webster was at a late hour

in that laboratory, where he toiled for his daily bread, reading a chemical book, as Littlefield has said. You find Dr. Parkman, I will not say intruding upon him, but calling upon him. A conversation ensued, and Dr. Parkman departed, with a menace upon his lips. "Something must be done to-morrow," said he. The time is passing,—the morrow passed. Dr. Webster, in the morning of that day, according to Littlefield and Maxwell, wrote a note to Dr. Parkman. I wish it were here, and did hope, at one time, that, with the multifarious papers produced on this trial by the government, that also would be presented. He wrote a note. Its precise terms are not communicated, but you will have no doubt that it had relation to the circumstances existing between them. Dr. Webster says that he came to him. That is a part of the memorandum found upon his arrest; and it is, therefore, competent for you to take into consideration that Dr. Parkman called again. At any rate, during that week, he was watching the highways, endeavoring to anticipate the approach of Dr. Webster to the Medical College. He was more than once at Cambridge Bridge. He was on the watch,—he was on the inquiry. He asked the tollgatherer of the passages of Dr. Webster.

On Thursday, having been at the bridge, according to the testimony of the toll-man, he procured a conveyance, drove out to Cambridge, and, when near Dr. Webster's house, made inquiries for it, and returned. The next day they met, and by appointment, under the state of feelings and excitement which had been generated by their whole course of dealing, and by the pursuit of Dr. Parkman, so constant and so unintermitting, so pressing and urgent. They met. Is it strange that men, meeting under such circumstances, should get into a wrangle? Is it strange, or unnatural, that one party, who felt himself to be pursuing a dishonest man; that he had been personally injured; would, therefore, take, I will not say the law into his own hands, but take that which would do more for him than the law could do, and would pursue his debtor? Is it strange that the debtor, who had been thus pursued, should retaliate?—that this should breed angry words, and that per-

sonal collision should follow, and that personal collision should be followed by that from which, when done, death would ensue? I am arguing upon probabilities. There is in morals, as well as in politics, a regular succession of events. Passion has its sway, as well as the laws of nature. The action of the mind is as regular as the motion of the planets in their spheres. It was as natural that men should fall into altercation—that altercation should be followed by blows, and that blows should be followed by death—as it is that any cause should produce its effect.

Gentlemen, the parties met under these circumstances—in this state of excitement; and we are now to suppose the death of this individual. This is all that we know. The creditor, pressing with a firm, if not with a hard hand! The debtor resisting! Justice may sometimes seem to be too exacting in its requisitions. The claim of right may seem to him against whom it is pressed to be urged too far, and the party will turn upon the other, who seems to him to be the aggressor. Word after word will be followed by blow after blow, and deadly consequences may ensue.

Which, when we are speaking of probabilities, is more likely—which most likely—the sudden altercation, bringing the parties to combat, and from combat to death; or that there should have been, on the part of Professor Webster, a cold, slow, fearful calculation, for a sin like this;—that he prepared the way; that he seduced the victim; that he led him on to the snare, and coldly and deliberately slew him? No, gentlemen, the annals of crime tell no such story as that: that a man like Professor Webster, with such a character and such a position, has at one single step leaped away from all the influences of education, social life, religious instruction, all at once, to the highest and worst crime that man can commit against his fellow! And yet, gentlemen of the jury, unsight and unseen, with these surrounding circumstances, and these amazing probabilities, you are asked to believe that this crime was deliberate and with express malice; not that these parties—hot and excited from former altercations, freshened from every

moment of intercourse that occurred between them—meeting for the last time, when the work was to be done effectually for Dr. Parkman—that it should have led on to a combat. There is no alternative. You are to judge which it was.

You are not to go beyond this period of time, but to stop there. What had transpired between these parties before that time? Nothing which afterwards transpired could change the character of the act, which was then complete. I leave to you gentlemen, as rational men, who are called upon here to decide upon the most numerous collection of circumstances that were ever presented to a jury, to determine whether you will not gather from the circumstances surrounding these parties, and under which they met, the conclusion that it must have been beyond all semblance, and all reasonable doubt that death came, not from premeditation, but from suddenness of anger, when there was a fearful heat of blood between these parties, exasperated the one against the other—exasperated until it came to death!

I have said that you are not to go beyond the act, to ascertain the character of the act itself. And it is easy to show that it must be so. Should you think that you could go further, to see what disposition was made of this body, when it was once killed, and gather premeditation from that,—stop and consider a moment. We should hope, perhaps we should even expect, that parties so situated, if they came to combat—if combat went on till death came—I say we should hope, and perhaps expect, that the party who, in the heat of blood, had been guilty of crime, would have been so overcome that he would have rushed from the place, and said, “God have mercy upon me!” to the first person he met; “I have killed my friend! From angry words, we proceeded to blows. Fuel was added to the flame, and in the heat of passion I smote him to the earth, a bleeding corpse!” I say that we should have hoped that a man would do this. But would all do so? Professor Webster was a man of standing in society. He had a wife and children. He was poor. While his blood was hot, and passion high—his victim slain—he does one rash act more. Before his

blood cools, he does one act more. Surrounded as he was, the temptation came over him to conceal; and he did the first act of concealment. From that moment, all disclosure was too late. The expected time of his salvation, by a public disclosure, was passed; and all that followed was the necessary consequence of the first false step that he took after his brother was no longer a living man. He attempted to conceal; and, having attempted to conceal, and having cut himself off from all possibility of public disclosure, the arrest follows. One false step leads to another, and at length the temptation comes upon him to conceal and destroy. To conceal and destroy! The temptation comes upon him to avert suspicion—to shut out proofs—to turn away inquiry. If, then, gentlemen of the jury, he shut up his doors—if he gave out false statements—if he did, what I do not think the evidence will warrant any one in saying—write these anonymous letters to the police, it would be only a continuance of that first false step, by which he shut himself out from his duty, and then, to cover up the crime he had committed, attempted concealment.

Wrong in his impulses, he certainly was. But still, after it was done, and the concealment must come, painful as it was, he had driven himself into the circumstances. And I put this to you, to ask if you do not see that the explanation of his subsequent conduct has no tendency whatever to show you the character of the act.

Then, riddle this testimony in all its parts. See the relation in which these men stood. See one pursuing the other. How natural to prompt resistance! How natural for them to have had a combat! The combat makes heat of blood. In the suddenness of passion, life is lost. And then, according to the plain statements which have been made, you are to judge whether these probabilities do not show, clearly and satisfactorily, to any reasonable mind, that the crime could not have been premeditated murder, but must have been extenuated, by the heat of passion, and the combat of the parties, into that great, but still lesser crime, of manslaughter.

Pass, now, gentlemen, to the consideration of other matters.

And yet, before I enter upon the evidence of the government which bears directly upon Professor Webster, I have to ask your attention to that defence which was suggested by the counsel associated with me, and which I may term the technical part:—the indictment and its averments—the duty of the government in relation to it, and the effect of the evidence which they have produced.

The first and second counts in this indictment, gentlemen, in my judgment, are substantially, for all practical purposes in this trial, the same. The charge is, that the defendant, with a certain knife which he had in his right hand, made an assault upon George Parkman, “in and upon the left side of the breast of him the said George Parkman, then and there, feloniously, wilfully, and with malice aforethought, did strike, cut, stab, and thrust, giving to the said George Parkman, then and there, with the knife aforesaid, one mortal wound.”

The second count charges that, “with a certain hammer, which he, the said John W. Webster, in both hands then and there held, him the said George Parkman, then and there, feloniously, wilfully, and with malice aforethought, did strike, giving unto him, the said George Parkman, then and there, with the hammer aforesaid, in and upon the head of him, the said George Parkman, one mortal wound.”

Both of these counts charge that he killed George Parkman by striking; and I suppose that any evidence to show you that the death was occasioned by any instrument would sustain either indictment. I suppose that any evidence that would satisfy you that death was by the hammer, would be sufficient to support the charge that it was by the knife.

But the proof to support these counts will not be sufficient to support the third, which charges that he “did strike, beat and kick, in and upon the head” of George Parkman, and cast him upon the floor.

The fourth count charges that the individual, in some way or manner, and by some means, weapons and instruments, to the jury unknown, did cause the death of George Parkman. Now we claim,—and upon this claim we shall receive the in-

struction of the Court, by which you will be governed,—we claim that the government are bound, in a charge of murder, to set out the charge in a plain, substantial and formal manner. We claim that the law has distinctly declared what formalities are necessary in an indictment. We claim that, among these formalities, the law has prescribed that the manner of death shall be distinctly described. We claim that no indictment is sufficient, which does not set out distinctly and precisely the means of death. We have called the attention of the Court to such legal authorities as we think fully sustain this proposition. They were read to you by the Counsel associated with me. Of course, I have no purpose to repeat the particular statement, but to reassert generally the proposition, that the government are bound to make such an exact statement in the indictment, or the indictment must fail. The defendant cannot be convicted under such an indictment. He is not bound to answer it.

With respect to this indictment, we say,—and we trust that we shall be sustained in this by the Court,—that it is incompetent for the government to offer any evidence, or to supply any evidence which is offered to support it, because it does not aver how the death was occasioned, in some particular way and manner. That last count, gentlemen, is no more than saying that the defendant might have killed Dr. Parkman by strangling, by poisoning, or by drowning him, in some way or some manner. Which of these, under this count of the indictment, is the defendant to prepare himself against—the fire, the water, the knife or the poison? He has a right to know. And, therefore, it is that the law has provided, that before an individual is brought to trial, the government may set out the offence which is charged against him in just as many different forms, and under just as many different allegations, as they choose.

These different statements in the indictment are called counts. The law provides that the government shall not be limited at all as to the number of counts. They may be extended, as my learned friend said, as far as the ingenuity of

man can carry them; but still, when the case comes to trial, the government are held within the counts which they have drawn, and the party is to be tried exactly upon the counts. And if it be that the government are bound to set out the manner of death, if there be any count in the indictment which does not set out the manner of death, but is entirely indefinite,—so that it may have been done in one mode or in another mode, each of which is recognized by the law as a distinct method of taking life, and to be set out in a distinct form,—then the government cannot make out its case, because it does not affirm either the one or the other positively; but is loose and general, and does no more than if it had said these words —“John W. Webster murdered George Parkman.”

If this proposition is correct, there is but one thing more I wish to say upon this point: that is, that, in applying the evidence, they must apply it to those counts which the evidence can sustain. For instance, if the government can satisfy you that death was inflicted upon George Parkman by a knife or a hammer, you may apply the charge to the first or second count; but it would not support the third count, which charges a means of death recognized by the law, and, if relied upon by the government, to be distinctly charged.

Then, again, if they present evidence to show that death was caused by striking with the hands and feet, and casting against the floor, that would not support the first two, but would the third alone.

With this statement, I proceed to add, that, in my judgment, there is no evidence in the case,—and I submit to you whether there is any evidence in your minds that you can apply to either of these counts,—to show that death was occasioned in that particular way, by the hammer and the knife. Do you know it, and can you affirm it, that this was the mode in which death came? It was not thought quite so certain by the Grand Inquest, by whom this indictment was presented. That is nothing. You are to pass upon it.

The only proof tending to show, in my judgment, that death was produced by either the hammer or the knife, is the evi-

dence of Dr. Wyman, about the fracture of the skull, and the perforation on the left side. Will the evidence of those causes of death satisfy you, beyond reasonable doubt, that either of them were the causes? Remember that the government are claiming that George Parkman was murdered by premeditation. Remember that they are saying, and asking you to say to John W. Webster, the fatal word, that he did premeditate this murder. If he did it premeditatedly, do you think he left the way of death to chance, to a chance blow, to the hammer which he might find, or the knife which he might seize; or that he prepared in advance, the way? Will you say that he did not strangle this man—that he did not take care instantly to stop his breath by the lasso? Is that an unreasonable suggestion? When the government are called upon to prove, beyond all reasonable doubt, that it was by striking or by beating his body with his hands and feet, are you prepared to say that this proof, which comes to no more than this—that he was living, and is now dead and mangled—shows that the death was in a particular form? Will you say, gentlemen, that it is impossible that George Parkman might have been seized, and that liquid poison could not have been poured down his throat, while his head was held fast? Will you say that provision was not made by which he cast himself voluntarily upon the floor?—this man, who always went down those steps in haste—that he did not throw himself down, and destroy life in that way? We are in the broad field of conjecture. The government asks you, not merely to conjecture, but to decide and to determine. It may be that there was a knife; it may be that there was a hammer. But is it certain? Unless it is certain that it was so, you cannot be satisfied of it; for it is necessary that the government should aver and prove the cause of death. I ask you, gentlemen of the jury, if it be proved, beyond a reasonable doubt, that death was occasioned in the forms and in the manner that the government have set forth?

I know that the Attorney General said to you, in the opening, that if he had relied upon his own judgment, he would have put the charge only on the fourth count; because he

would regard the assertion that the indictment could not be sustained under it as a reproach to the law of the land. It may be a reproach. The question is not, Is it a good law? If the law requires that certain specified forms must be gone through with, those forms must be gone through with. And which, I ask you, would be the highest reproach to the law, to leave such rules unamended, or for courts and juries, knowing what the law is, to legislate on a man's life for a particular case—make a new law when a man's life is in peril?

No, gentlemen of the jury, if this be the law, if the government proof does not come up to the demands and requisitions of the law, then I say it is a great duty which you have to do, upon this state of things, viz., to discharge the defendant. 'Guilty, he may be. But what says the law?'—"Better that a hundred guilty men should escape, than that one innocent man should perish"; and therefore it throws round the life of every man these guards and protections of the law. It makes rules for circumstantial evidence; it makes rules for indictments; it hampers its own officers with technical forms, for the protection of life. It means that it shall be so. And I say to you, gentlemen of the jury, that to acquit even a known felon of an offence odious and atrocious,—I say to acquit him, according to law, is a nobler triumph than was ever witnessed in the groans or agonies of convicted guilt upon the scaffold. If, gentlemen of the jury, you shall receive instruction in conformity to the views which we have taken of the law upon this subject,—if you cannot find, beyond reasonable doubt, how this death came,—for your country's law and your country's justice, I ask a favorable verdict from you on that point.

Gentlemen of the jury, I shall proceed now directly to the consideration of the evidence upon which the government claim that they have brought home to the prisoner at the bar the charge which they made. And here, gentlemen, we must pause for one moment, to see again the precise position which the parties occupied. I say, then, to you, once more, that the government claim that George Parkman entered the college between the hours of one and two, on the 23d of November, and

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that he never came out. The defendant admits that Dr. Parkman was there at the hour of half past one, and that he left the college. You see the position which the respective parties take. If the government will not take the admission of Dr. Webster that George Parkman was there at one and a half o'clock, but choose to take a different hour, that different hour is by them to be proved.

Now, gentlemen, I wish to call your attention particularly to the evidence bearing upon this question. I wish to do so, because involved in it is another consideration. The government claim that Dr. Parkman came to his death by Dr. Webster's hands. Dr. Webster denies that statement. The government claim that the remains which were found were those of the body of Dr. Parkman, and that they have proved that he came to his death by violence.— This is neither admitted nor denied, in this state of the question, by Dr. Webster; but he says he knows nothing of it. We stand, then, gentlemen on that—on that, as from the beginning. When Dr. Webster, on the morning of the 1st of December, after such a night as a man has scarcely ever passed, recovered partially the power of speech, he uttered, in simple but expressive language, his defence: "I do not think those remains are the remains of Dr. Parkman; but how in the world they came there, I am sure I don't know." His proposition, then, gentlemen, you perceive is, that by some way and means, and for some purpose or other, those remains were placed in that building, without his agency, and without his knowledge; and never has he professed to know what they mean. He cannot now profess to be able to explain them. This he says—"I am guiltless of my brother's blood." The evidence of the government, how summary soever it is, cannot and ought not to avail. I wish, then, gentlemen, to trace, as well as I can, the evidence of the government which bears upon these two propositions.

There are a few subjects which, it seems to me, can be disposed of now better than in any other stage of the cause; and I now propose to dispose of them, before going to the great propositions. The great circumstances which the government

rely on are, that Dr. Parkman entered the Medical College, and never went from it; that shortly after, the remains were found in such a manner as to imply that Dr. Webster must have known about them. There are several auxiliary circumstances connected with it.

In the first place, I call your attention to these anonymous letters. Three letters were received by the Marshal. They are brought in here for the purpose of showing that Dr. Webster attempted to avert the attention of the police from the college. And it is said—the argument must be, that Dr. Webster, if conscious of innocence, if there was no occasion for diverting the attention from that college, could never have written such letters. The argument is strong, if the fact is established beyond all doubt. It would be difficult to assign a motive why Dr. Webster, as an innocent man, should have written such letters for any purpose, except to divert from himself the inquiry.

But, then, we are to consider, first,—is the fact proved, that these letters were written by Dr. Webster. That, gentlemen of the jury, is utterly denied. I mean to state it to you from him as strongly as I can;—it is utterly denied. And I mean to call your attention to the proofs in the case, for a moment or two.

I am sorry, gentlemen, it happened that these letters came so recently into my possession as they did,—that I should have had so little opportunity to make a personal examination, and to go abroad, and to see what examination could be there made, in relation to them. They were put in the last of the government's evidence. My engagements were of the most pressing character, and those of my associate, also. We were drawing towards the close of the trial, when we were to make preparation for this hour; and our attention could be less effectively given to these letters than it otherwise would. And yet I have seen sufficient of these letters, enough to satisfy me that the evidence is not such as to convince you that Dr. Webster wrote them.

The evidence that the government has is, first, the letters

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themselves, and then the testimony of experts. Deacon Gould says he has, for a long time, known the hand-writing of Dr. Webster, and that he has some superior knowledge; but I think it cannot have escaped your attention, that it was presented on the ground that he has effective skill. Now, as to these letters, there is quite a difference between them. Mr. Smith, the engraver, sustains Mr. Gould about the "Civis" letter, but not about the others. That letter was dated on Monday; the others were dated the 30th. Indeed, one was dated the 31st, but post-marked the 30th. Now, it is these that Mr. Gould has expended his force upon; and if either of these is in the hand-writing of Dr. Webster, the "Civis" letter is.

I have not had much time to examine this, but I wish to call your attention to some things which Mr. Gould states. He sees the resemblance in certain letters, in which he says they are precisely alike. Now, I have unpractised eyes. I claim no skill as an expert. Quite the reverse. But I think I have skill enough to discover that, in some of these particulars,—and I think you will decide in all,—this Mr. Gould is the merest visionary ever called upon to testify before a jury.

I am about to ask you, when you retire to your rooms for the last solemn decision, that you will take these letters. Remember that you are not to be governed by the opinions of Messrs. Gould and Smith; they are only opinions. And you are to consider whether it is proved, beyond all reasonable doubt, that these letters are in the hand-writing of that man. In connection with that opinion, you may have your own opinion, and exercise your own judgment. And from comparison of the same papers from which that witness has formed his opinion, I will show you a specimen. Among other things which the witness says were made alike, you will remember, were the figures 1, 3, and 9. You will find, in the "Civis" letter, that they are made different. Here is the date 1849,—*"the last shall be first, and the first last."*—I wish you would look at that 9 and then look at those upon every one of the checks.

Believing, gentlemen, most confidently, that letter is not in

the hand-writing of Dr. Webster,—(it would take quite too long to go into particulars)—I have to say, generally, that I think the most careful scrutiny of it, in comparison with the real letters which have been produced, will show that the objection of Mr. Gould, upon this subject, is of such a character that no jury will feel safe to act upon it in unimportant matters—much less to be sufficient to justify them in acting at all upon any part of the evidence.

I know that I need not dilate upon this. I have stated my own convictions. The Court will state to you what the evidence is; the Court will state the law. And I will leave to you to form your judgment upon those letters, with the genuine papers in the case; and have no doubt, that when you have done that,—though the government have been zealous and honest, have done no more than what is right and fit, in laying the evidence before the jury,—yet, you will come to the conclusion that you have no other right, and no other evidence in relation to that, than to lay it out of the case.

There are one or two other considerations. The government have introduced testimony here in relation to certain articles found in the possession of Dr. Webster. They have called testimony here, to show you that on Friday morning Dr. Webster ordered a tin box. So he did. How does that connect Dr. Webster with this murder, or anything in relation to it? Why, it may be argued, that it is a box in which the remains could have been put. But was the box made for that purpose? Did the Doctor say anything which indicated that it was to be made for that purpose? The Doctor said no such thing. Where were the remains?—and where was the box to go? The remains were at the Medical College. Was the box to go there? The box was to go to Cambridge. Now see the position in which the government was placed. Dr. Webster calls at Mr. Waterman's, orders a box; and is asked what it is for, and he tells. He is asked where it is to go, and he tells. The government ask you to think that that is a lie. The government say that it was a good thing to put the thorax and the thigh in; and, therefore, conclude that it was so. Gentlemen,

you are to be satisfied beyond reasonable doubt; not what is probable; not what is likely. And yet, gentlemen, seriously, the life of Dr. Webster is dependent upon this very thing.

Suppose that the case were so balanced that the jury should say, We are satisfied, if it is proved that this box was made for this purpose. The government say they can prove it. They call in Mr. Waterman, who says, "The Doctor said it was to put small things in, and to be sent out of town to be filled." All you can say is, that that is not true. That is to say, there is no proof, one way or the other, as to the cause to which it was to be applied. And yet, this object is just as much to be proved as you are to be satisfied beyond reasonable doubt of the murder itself. Every fact which the government present makes an issue; and if it is disputed, then that fact is to be established by proof, and not by conjecture. And if the proof falls short, then that fact is to be laid out of the case. It is to have no influence, because it is not proved. That is the whole argument with respect to the tin box.

I have only to say to you, with respect to this, and the fish-hooks, that Dr. Webster had ideas of his own upon this subject. We cannot prove it by what he said to his wife, or children, or anybody else. He cannot get up in court and testify to it. He does say that they had nothing to do with it, and puts the government upon proof. Standing in a land of law, he has a right to say that they are not proved.

With regard to the fish-hooks, the government say, probably, that they were to be made into a grapple. Where have they the proof? Will they take the statement of Dr. Webster as to what he intended to do with it? No, they will not. And if they will not take that statement from him, take you none from them. "Prove all things, and hold fast that which is good."

Now, then, I say that the government, with reference to this, have given no more than a possibility, not an application; and they must show the application, or the intent to apply these articles, or they can have no effect.

At one time, another matter seemed likely to cause perplexity. I refer to the bag of tan which was brought to the college by Sawin. With respect to the tan, it seemed at one time momentous. Dr. Webster sent in, at one time, a bag of tan from his house. A part of these remains were found imbedded in the tan. Here were these remains on Friday, and the tan was sent in on Monday. Dr. Webster is able to prove that the tan was there on the morning after his arrest. The bag of tan was seen on Tuesday morning by Mr. Kingsley. But it existed untouched on Friday morning.

There is no proof that there ever was seen any other bag. It does not appear that the tan was ever used, or touched. Still, here, as in the other case, I suppose the government ask you to make some inference from it. The truth is, the tan was there for a purpose which Dr. Webster could explain. If you go into the laboratory, and see all the contrivances, you would hardly be surprised that anything which mechanics use should, in larger or less quantities, be found in a chemist's laboratory.

I did not know, gentlemen, at one time, but that we should be in danger from another matter, of which evidence is in the case—that bunch of keys which was found after Dr. Webster's arrest. I did not know but that they were to be brought in, in some way, to the connecting Dr. Webster with this awful crime. But all that we have upon this subject is the explanation of Dr. Webster. He says he found those keys, and thought they might be useful. The keys were separate and distinct; and it turns out that a portion of them will apply to the dissecting-room, and to two doors in his own room. He had a right to go to the dissecting-room, and to his own room; and, therefore, the keys are nothing. If he were on trial for burglary, they might be proper evidence. Being on trial for murder, deadly weapons would be proper. The keys touch the burglar; the deadly weapons touch Dr. Webster. I submit that there is nothing which affects, or which ought to affect, this case, in the slightest degree.

Mr. Littlefield has testified, in relation to a sledge-hammer, which was there at the time when it is supposed this crime was

committed, that he has searched diligently for it since—and it is gone.

Another witness has testified in relation to twine. There was twine found tied around the bone of the thigh that was inserted in the thorax, which was buried in the tan. This twine corresponds with twine which was found in the private room of Dr. Webster, and that which was on the fish-hooks which were purchased. Now, if Dr. Webster committed this offence, he might, or he might not, have twine. If he made that grapple, and used that it could be proved that while he was doing it on one side, he was tying the thigh with the other, it might convict him. But take our hypothesis, and it explains it. "How these things came there, I don't know."

The government's case does not exclude the idea that all these might have been placed there by another agent. If another man came there and did any of these things—that is enough. If another man came there and brought these remains, that man could dispose of them, could carry sledges away if he pleased, could use sledges, and, if he found a ball of twine there, could tie it round the leg of a human being. And therefore the twine and the hammer are explained, if at all, by the agency of the third person.

One or two words upon two or three other topics, before I come to the main topic. Something was said about a \$20 bill. Dr. Webster came to Trenholm, and inquired about the \$20 bill which he had heard of from the Marshal. Dr. Webster knew nothing about it, and inquired. Mrs. Coleman testifies that Dr. Webster called on her, and asked her if she saw Dr. Parkman on Friday. She said, "No, it was on Thursday." He asked again if it was not on Friday, and she repeated her answer. Just as he was going out of the door, he asked the third time. She seemed to indicate, by her manner, that he had asked enough; and she answered something sharply to him. Everybody was inquiring, at that time, if any one had seen Dr. Parkman. Dr. Webster was interested in everything that touched public excitement; and he was as likely as anybody else to inquire of any one whether they had seen Dr.

Parkman. When passing from the college to his home, he called on her, and asked her if she saw him on Friday. She says, "No, on Thursday." Now it happens that it was almost immediately afterwards that he was arrested. It was on Friday that he called—on Friday, the day of the arrest, when he was going on a voyage of discovery. He said to Mrs. Coleman, formerly Mrs. Bent, "I saw him on Friday." I cannot but think that Dr. Webster must have understood Mrs. Coleman differently, or he would not have asked them to call in and get her conversation. There is no pretence that Dr. Webster sought to induce her to make any representations upon the subject. He did not persuade her, or attempt to persuade her; but he simply asked for personal information; and having obtained that, howsoever he understood it, he did not ask her to make false representations. I shall leave that, with an assurance that it cannot make an unfavorable effect upon the interests of my client, upon the present trial.

There are two matters testified of by Mr. Littlefield, which would better be disposed of with this class of miscellaneous testimony. I refer to the blood, testified to by Mr. Littlefield, and to the inquiry of Dr. Webster relative to the dissecting-vault.

In the first place, with respect to the blood, Dr. Webster was entirely open in his communication with Mr. Littlefield upon the subject, asking him to go to the hospital, and saying that he wanted it for his own lecture. There is no evidence as to the use intended to be made on that occasion. Professor Horsford has said that it is not unusual to use blood, in the course of chemical lectures. If the subject was proper, it might be used to advantage. There is a presumption of law in reference to this, as to all parties—that the innocence is presumed unless the contrary is shown. And unless it can be shown that there was an inappropriateness of the use of blood in that lecture, it is nothing. He probably wanted it to show to the class, as teachers of chemistry sometimes do.

Then, as to the dissecting-room vault. Dr. Webster inquires whether it was mended; adding that there was some talk about

having it done. Littlefield said it was done. "Well," says Webster, "it is tight, now; does it generate gas?" No; the Doctor did not ask the question; but he obtained information so that he might infer it. Said he, "Did you ever try a light?" "Yes," says Littlefield; "Dr. Ainsworth asked me to put a light down, and I put one down, and it went out. Dr. Ainsworth could not get the article he was in search of." Dr. Webster says, "I want to get some gas," as soon as Mr. Littlefield told him that the light went out. "Can you, sir?" says Littlefield. "Yes, I can," was the reply; "and I will do it at another time;" and there the conversation ended.

It is a fact that Dr. Webster made this inquiry for an innocent object; and it is made use of, on this trial, against him. The truth is, if he contemplated this murder at all, it was so complete a place, and he was so assured of its safety, that you would, certainly, if Dr. Webster had done it, have discovered the body there, instead of anywhere else. I submit to you, that the evidence is insufficient to prove that for which the government present it.

I am sorry to delay you so long about these subjects. They are a part of that immense mass of evidence which is thrown into the scale against the life of the prisoner at the bar. I do not believe that, in the final adjudication of this case, you will feel at liberty to regard them at all; and I pray you, that unless they are clearly proved, and unless you are satisfied, beyond all doubt, that they have to do with the case, that they will be removed from it.

I come now to the evidence bearing directly on Professor Webster, viz., to the first proposition, that Dr. Parkman never left the building, and that the remains were those of Dr. Parkman, slain by Dr. Webster. Dr. Webster's proposition is, that Dr. Parkman was there at half past one o'clock—not after; not at ten minutes of two, but at half past one; and how the remains came there, he is sure he don't know.

And now I have to ask you to consider that the government theory is altogether incorrect; and that there is strong reason to believe that these premises were invaded by an unknown

form. I have called, gentlemen, your attention carefully, I hope, candidly, to the evidence which the defendant has been able to produce here, tending to establish the fact of the *alibi* of Dr. Parkman. That *alibi*, according to the evidence on the defence, commenced at twenty minutes after two o'clock, when he was first seen, in Causeway street by Mr. Thompson.

I mean now, gentlemen, by the most precise and careful analysis of the evidence in this case that I am able to make, to satisfy your minds, not only that we, on the part of the defence, have proved the *alibi*,—that is, the separation of Dr. Webster and Dr. Parkman,—but that the government have fully, and clearly, and unequivocally established it. I mean, gentlemen, that this evidence, when all considered,—all that they have put in, connected with all the facts in the case,—will fairly warrant the conclusion, that, at the times when the government witnesses say they saw Dr. Parkman, it was after he had been in and finished his interview with Dr. Webster, and had gone away.

This, gentlemen, you perceive, is a matter of the greatest importance, because, if it be true, has the strongest possible tendency to show, that although appearances may be now so much against Dr. Webster, and although this testimony presses so that at times it might seem impossible to escape,—I say, if this be so, it has the strongest possible tendency to exculpate Dr. Webster, and fix the crime somewhere else; not that Dr. Webster can explain it, but it shows that there is a theory and a hypothesis which the government's testimony does not overcome or reach.

Remember that rule which governs circumstantial evidence, which was so admirably explained to you by my associate, that the government are to prove, first, the facts, as the basis of the conclusion; secondly, that the facts shall tend to establish, and actually prove, the proposition which the government assert; and, thirdly, that they shall exclude, to a moral certainty, every other reasonable hypothesis.

Now, gentlemen, if the government testimony goes only to show that their testimony will support their theory, but falls

short of excluding any other reasonable hypothesis, and excluding it to a moral certainty, then, howsoever strong suspicion, or probabilities, or bias of mind, may be, yet the fact asserted by the government cannot be said to be proved beyond reasonable doubt.

Let me call your attention to this question of time; it becomes of the utmost consequence. Recollect that the assertion of Dr. Webster is, that the time was one and a half o'clock,—not more than that. Was that the time?

The government witnesses, Mrs. Martha Moore, her son George, Dwight Prouty, Jr., and the Messrs. Fuller, clearly establish that the time Dr. Parkman was seen going down Fruit street into North Grove street could not have been earlier than ten minutes before two o'clock. Dr. Webster says that is twenty minutes after he was at the Medical College. Where was Dr. Parkman during that twenty minutes? Had not he got there, and gone away?

I will endeavor to satisfy you that he went there, and finished his business, and had gone. At half past one, Dr. Webster says he was there. What did Littlefield tell you that he testified on this subject, on a former occasion? He fixes it now, approaching two o'clock. He does not fix it entirely; he leaves it something loose. But he tells you that on a former occasion he thought and testified that it was earlier. Mr. Littlefield fixes it indefinitely. What he said upon a former occasion has no bearing. Dr. Webster fixes it at half past one o'clock. What was the hour of the appointment? Here we are not left to the statements of Dr. Webster, but we have testimony from a witness on the part of the government, and from a person who knows something in relation to it. I refer to the testimony of the servant of Dr. Parkman, Patrick McGowan. He did not hear all the conversation, but he did hear enough to know when was the hour of the appointment; and the hour of appointment was half past one o'clock. Then we have these two important facts, to aid the assertion that Dr. Webster first asserts, that it was half past one o'clock.

There was an appointment, and the hour of half past one

o'clock was mentioned. This appointment, I think fairly to be inferred from the testimony of Patrick McGowan, was at half past one o'clock. It is likely that, according to that appointment, Dr. Parkman was there at that time, because, according to the testimony of his friends, he was the most punctual of men. If he made an appointment, he kept it; and exactly, and especially, and strongly, in this particular case. He was pursuing Dr. Webster earnestly and closely.

If Dr. Webster appointed to meet Dr. Parkman at half past one o'clock, upon this business, do you believe that the most punctual of men would have given to him the opportunity of an apology—"You were not here at the time"? And therefore I say, upon the proof of Dr. Webster's own assertion in the case—on the testimony that comes from Patrick McGowan, and the probability arising from Dr. Parkman's habits of punctuality—it is extremely probable that the statement of Dr. Webster is true.

But now I come to the testimony of Dr. Bosworth, and to compare that with Littlefield's, who says that he saw Dr. Parkman coming towards the college on Friday noon, November 23d, and that the door was wide open. The door being wide open, and Dr. Parkman coming toward the college, he went into the adjoining room, and saw no more. There was another man there when Dr. Parkman passed. Littlefield was standing there looking out, and immediately after saw Dr. Parkman go up to the door, as he passed by. Dr. Parkman went up on the steps. Now, Littlefield did not see Bosworth. Littlefield has not given any account of seeing any man at that time.

One thing more, which shows that there were two times when Dr. Parkman came there. When Dr. Parkman was coming up from Grove street to the college, the door of that college, according to the testimony of Littlefield, was wide open. When Bosworth came there, and crossed the top of the steps in front, the door stood ajar—that is, partly open.

Now, the testimony of Bosworth, in connection with the statement of Dr. Webster, the time appointed as attested by

McGowan, and the punctuality of Dr. Parkman to meet all appointments—I put it to you, if it is not the most probable thing in the world, that Dr. Parkman was at that place at half past one o'clock, and then went away. Fifteen minutes after, he was in another place, according to the testimony of Mrs. Hatch, who testifies that at fifteen minutes before two o'clock she saw him going up Cambridge street. I put it to you whether this is not clearly evinced by all the testimony: that the appointment was made at half past one o'clock; that the most punctual of men kept it; that the interview was, as Dr. Webster says, very short; that he left the college; and then, for some purpose or other, came back again, but shortly after was seen by Mr. Thompson, in Causeway street. I do not see, gentlemen of the jury, how this conclusion is capable of being avoided. The appointment was at half past one o'clock. Dr. Parkman was the most punctual of men. Dr. Webster had no earthly reason to state a false time. If he were guilty, and made a disclosure, he would disclose the true time. Dr. Bosworth saw Dr. Parkman when Littlefield does not speak of seeing anybody, and when the door was in a different situation from what it was when Dr. Parkman was there the second time. I put it to you, when we are in a case surrounded by nothing but probabilities—perhaps hurrying this prisoner to the last hour of life—whether a deduction cannot be drawn, which will satisfy the mind of any rational man, that Dr. Parkman had finished his business, and that this proof of the government shows that he came there again.

Let me ask your consideration to one thing more. Dr. Parkman stepped into Holland's store, and talked about butter and sugar. Only consider that he had not been to the college. He had made an appointment to be paid by Dr. Webster, after pursuing him in all directions—going to Pettee and to the toll-man—going to Cambridge—watching the highways and byways; and then he goes down to meet his appointment: and do you think he would stop in to Mr. Holland's to spend a quarter of an hour about buying butter and sugar?

Take another hypothesis. He had seen Dr. Webster, comes

away, and goes to Holland's store. Holland says it was about half past one o'clock. Mr. Moore says it was a little later. He steps into Cambridge street just in time to be seen by Mrs. Hatch. And then you will find that afterwards he was upon the college steps, for some purpose or other.

Here are these facts. I cannot explain them; there is mystery everywhere. If it cannot be explained, give to the defendant the advantage of all probabilities and arguments in his favor. Do not let your decision be more fatal than the events of that day.

If, then, gentlemen of the jury, there be a strong probability that Dr. Parkman has been murdered, I cannot conceive anything stronger than this position I have taken. The testimony of Bosworth strikes my mind with vast force. Not seen by Littlefield! The door partly open, and not as Littlefield testifies it was when he was there at ten minutes before two o'clock!

Now, gentlemen, let me go one step further. I have said to you, in an earlier stage of the case, that it was not uncharitable, nor unjust, nor unreasonable, to suppose that, in this state of excitement, he might have been touched by those causes which occasionally touch and overcome human infirmity; and that if his friends believed that he might have been overcome by aberration of mind, this may account for his irregularity of movement—for his failure to return home—his conduct, in one instance, at least, peculiar.

Now let us trace that night down, and see whether the government testimony excludes all reasonable theory. If Dr. Parkman was out, you see the foundation for a reasonable theory exists. If his dead remains were found, Dr. Webster had nothing to do with them. That night, at half past ten o'clock, he was at home, or at Mr. Treadwell's; found at home at half past twelve or one o'clock, and at home in the morning. A medical student has testified that he saw Dr. Webster Friday evening at six o'clock. I leave it to you to say whether he is not mistaken. Mr. Kidder saw him at five o'clock, buying cologne. The young ladies say that he was with them at tea, and spent the evening with them. That night, when I have

shown you that Dr. Parkman might have been brought into the college, Mr. Littlefield was careful to fasten up that building, bolt the dissecting-room door on the inside, and leave it bolted. The next morning—Dr. Webster at home during that night, and all night—that dissecting-room door, which was bolted on the inside, was found unbolted. Somebody had been there. Who was it? I don't know. Somebody had been there. Inexplicable, mysterious, but important, most important, for your consideration! Somebody had been there. Monday and Tuesday, these rooms of Dr. Webster were passed through, at least, if not searched. Nothing then was found. Wednesday after, he returned home at eleven o'clock. Dr. Webster was in Cambridge, and remained there till evening—till he went to pass the evening with his friend Cunningham; spent Thanksgiving at home, and came into Boston Friday morning.

In the meantime, had anything else transpired? During this period of time, Dr. Webster's rooms were accessible, because Littlefield got in, though not through the door. But he who unbolted the door on Friday night could have got in the same way as Littlefield did. But, during that time, a change of some significance had taken place.

Kingsley made an examination with Littlefield—slight, it may be, but still some little examination. And, among other things that he saw, was this tea-chest, at that time filled with tan, and partially covered with papers containing minerals, or with minerals in papers. Partially covered! Not entirely! Only covered in such a way that he could see the tan just as well as he could see the minerals!

Between that Friday and Tuesday there was a change in that particular. The chest then was only partially covered up with minerals. A change had taken place, and, in the meantime, this building was accessible. It had been entered in a mysterious way on the very Friday on which Dr. Parkman disappeared. A change took place, and, accompanying that change, there are these two very remarkable circumstances. In this tea-chest, what else was found? In it that knife, as clean as when taken from the merchant, with no spot

upon it, was placed. Wherefore so? Dr. Webster had made no concealment of it. Wherefore conceal? The silver weapon was exposed. Why hide this, a clean knife, by the side of that tan? If Webster had done so, why? If another man had done so, he had a motive; that was to bring in direct connection Dr. Webster and these remains. And therefore his knife may have been placed there.

Another circumstance! Why was that twine put upon the bone of that thigh? Can you conceive the reason? Assume that Dr. Webster did it. Wherefore did he put the twine upon the bone? He did not put any twine upon the remains which were cast into the vault! He did not tie it round the thorax, for the purpose of pressing it together. But it was tied to the bone. Wherefore—wherefore? Dr. Webster could not have done it. If there was a mysterious being there, who changed things while he was gone, who did all the business,—then, gentlemen of the jury, you can see a reason why that twine was there. It was to bring, if the matter were ever discovered, that portion of the body into immediate connection with somebody.

Now, gentlemen of the jury, these remains were not found, any of them, on Monday or Tuesday. On Tuesday, remember, the testimony of Mr. Kingsley was, that he saw a fire burning in this furnace—a bright fire burning there. But there is no pretence, I think, that then the head, or the arms, or the limbs, of any human being, were in that furnace. There is no such pretence as that. If there was a bright fire burning, it was seen; and if human flesh or bones were burning, they would have been noticed.

On Wednesday, it was said that there was a great fire burning in the furnace. But Littlefield saw none. Yet he did see Webster carrying the materials. For what purpose, we do not know. But this we do know,—watched or not watched, Dr. Webster left early on that day, and did not return till Friday morning. In the meantime, the room was open to whomsoever might go there. And if there was a person who disposed of some of these remains by putting them under the privy,

finding the fire left by Prof. Webster in the morning, might he not have conceived the idea of burning a portion of the remains there, and so the whole be accomplished?

Now I have said that these were mysterious circumstances. Probably Dr. Parkman wandered around the city, and finally went, in the evening, to the college. But there is a mystery beyond.

There is one mystery concerning what is found. The remains found are those alone of the naked dead body of a human being. Where are the remnants or the traces of the garments? In this furnace, mark, so accurate and so exact was the examination of the chemists, that they were enabled to detect a quantity of tea-chest lead. It is in the report which has been read to you. So exact and minute was one examination as that. Where is anything, or the remains of anything, but the naked dead body of a human being? And yet, gentlemen, it is certain that Dr. Parkman wore garments from head to foot, and had a coat, and under-clothes, and boots. And there undoubtedly was, as there is about all of us, something of an incombustible character—the buckles of our suspenders, sometimes the buttons on our coats, and the nails in our shoes. Somewhere or other, have not remnants, or specimens of the remains of these, been found?

Now, I put it to you, if when in that college you find nothing but the remnants of a naked human being,—if you know that Dr. Parkman had garments upon his person, if you find that there is a probability that he may have been, in aberration of mind, wandering in different places—I submit to you if it is an extravagant, visionary theory, that he was stripped elsewhere, that his garments never were in that college; that he was taken in there a naked body, and treated as he was treated till danger was thought to come, and then his body was disposed of. You are the judges; but upon these facts, these probabilities, these circumstances, you must pass. They can not be disguised; they cannot be discarded. And if they make doubts for the government's case, if they leave you, with all their accumulation of proofs, in a state that you cannot say,

with positive assurance, I am convinced, beyond reasonable doubt, that every other reasonable theory is, to a moral certainty, excluded,—then our innocence may not be manifest, but our salvation from conviction is, under the laws of the land, made certain to us.

I wish, for a few moments, gentlemen of the jury, to ask your attention to the consideration of some of the testimony of the government, which has been thought to be, and perhaps rightly thought to be, of a very conclusive, at any rate, of a very material character. I refer to the testimony of Mr. Littlefield. I regret, gentlemen, that my duty compels me to allude to the testimony of that witness. I regret that I am obliged to do so, because I am confident whatever is said about this has a tendency to point a suspicion toward him as the perpetrator of this crime. Now, gentlemen of the jury, you must not misunderstand me. I will not take upon myself the fearful responsibility, in defending one man, to charge another with the same crime. Far be it from me to say that I will charge Ephraim Littlefield with this crime! Far be it, whatever may be the tendency of my comments, if the effect should be to fix it upon him—far be it from my intention to connect him with this crime! But, gentlemen of the jury, it is my duty to examine, and it is your duty to weigh, the testimony of this witness; and if there be anything which tends to affect the testimony of that witness, you must give it weight, whatever the consequences may be. So I must discuss it.¹

Gentlemen, I shall discuss this subject in the fearless discharge of duty, leaving consequences to direct themselves, but without making the slightest imputation upon Mr. Littlefield as the murderer. You are to consider, gentlemen, the testimony of this witness. It is important, because it has a tendency, I admit, to exclude the theory which I insisted upon in behalf of the defendant. It has a tendency to show the more direct agency of Dr. Webster with the various facts and cir-

¹ See *post*, p. 428.

cumstances connected with these remains, and therefore to endanger my client's life.

Then let us see if there are circumstances which should abate our trust in that testimony. If there are, we must give them weight. We will not charge crime on others, but we will save those who are charged with crime from an erroneous conviction. You are to weigh the testimony of Mr. Littlefield. He is, to some slight extent, corroborated by the testimony of others; by Sawin, the express man, from Cambridge, who says that he brought things from there, and left them in the entry, as he never did before. I suppose that he had never brought such things before. He says the Doctor told him,—not that the room was locked, and that he would not find the keys,—but to leave them in the entry. But he went there, and concluded that he would take the key from the kitchen, and stepped in to get it; but it was gone.

First, Dr. Webster did not say the room was locked. Secondly, consider that he said nothing on the subject of the keys. Third, Mr. Littlefield had said that he had continued to go to this door, that he had tried it, and found it bolted on the inside; from which I think it not improbable that the key was in the possession of Mr. Littlefield himself, he retaining the key, not for the purpose of deception, but in the natural course of things. And I think, so far as that the doors were locked, Mr. Littlefield is confirmed. To about the same extent, Mr. Littlefield is confirmed by the testimony of Mrs. Littlefield. It is not very material. She had been asked to do something, and after a time was unable to do it, without explanation from Dr. Webster.

But Mr. Littlefield says much more. And it is not, after all, so much the effect of the testimony of Littlefield, in finding this door or that door fastened, which exerted an influence; but the tenor of his testimony, that Dr. Webster entirely changed the character of his conduct, entirely changed the mode in which he took care of his room, and gave outward manifest appearance, by changed conduct, that something was wrong. When this is the purport of a witness' testimony, it

becomes of the highest moment to understand how full is the credit to be given him—if he is to be fully credited. If he is not, then human liberty and human life cannot rest upon any deductions to be drawn from such proof.

We do not attempt to impeach the testimony of Littlefield as to general character. We do not rely upon discrepancies and contradictions. Some mistakes he has made; some errors he has fallen into as to time; some difference, upon a close analysis, I think, would be found in his testimony, relative to results, and the testimony of others. But upon these matters, gentlemen of the jury, I am not disposed to dwell; though I must say that we should be careful, extremely careful, where life is in peril, not to place too much dependence upon a witness who, in giving part of his testimony, has fallen into error. A wide berth must not be given to witnesses upon whose testimony depends the fragile thread of human life.

Yet, it is not upon the ground that he mistook the time of the interview that I should ask a jury, even in such a case, to question his testimony; but the material part of it is upon the character and conduct of the party charged with the offense. And it is my duty to call your attention to this intrinsic, internal evidence, and to ask you whether there be not something from which a disposition to give credit and reliability starts back.

Gentlemen, consider this testimony. Consider the accounts which he gives of himself in reference to Dr. Webster and these remains; that is the material amount of his testimony. It spreads over a vast surface. He occupied the time of some three or four of the longest of the government's witnesses. But, after all, it narrows down in importance to a few matters, and the credibility which is to be given to it depends upon a few circumstances.

Gentlemen, in considering this testimony, let us take a point from which we may make our observations. That point is Sunday night, when he had his conversation with Dr. Webster, who then inquired of him when he saw Dr. Parkman last. He replied, on Friday; which, in passing, gentlemen, you may re-

collect is quite different from what he said to Trenholm, on Saturday—that he had not seen Dr. Parkman for three or four days. Dr. Webster told Littlefield that at the hour of one and a half o'clock, Dr. Parkman came, and he paid him \$483. And then, by the narrative of Dr. Webster, and his manner, "it came," says Littlefield, "into my mind, that Dr. Webster was guilty" of this awful crime of murder. Up to that moment, between Littlefield and Webster there had been as kindly a relation as there is between you, gentlemen, from your long acquaintance upon this panel;—the professor occupying a chair in that college; Littlefield holding a place in part under Dr. Webster, and Dr. Webster a man of fair character and reputation in the world. Yet, this brief conversation, as Littlefield said, forced upon his mind the clear, settled, firm conviction, that Dr. Webster, the man whom he was talking with, was a murderer. He had a sharper vision than the police officer, Fuller, who visited Dr. Webster, and had more conversation with him that evening.

So clear and certain was Littlefield, that he went to his wife, his bosom companion, unfolded to her his convictions; and she replied to him, "For mercy's sake, don't say or think of such a thing as that!"

Now, gentlemen, is not that somewhat remarkable, that this strong, mighty, overwhelming conviction—that this should have come into the mind of Littlefield, at that time, from that conversation—not from what had transpired elsewhere, but from that conversation—not from what had transpired, but from that conversation? Now we have this point of observation: This witness says that at this period of time his suspicions were strong and overwhelming—thorough, certain, complete, and undoubted. Now mark his conduct before and after that time, and see whether it squares with the statement that he makes, that his conviction was so strong upon his mind that it was only under the exhortations of his wife that he was silent for a moment.

Before that Sunday, on Friday, again and again during the afternoon, he visited all the doors in order to enter and make

fires. He went to the party; he came home late; he went to all the doors at that time of night—and what for? Surely, not to make fires at that time, when the next day was not lecture-day! He testifies that he went to the party, and came home in his party dress; that he went to these rooms, and examined them all.

In a man who had no suspicions, this vigilance was remarkable. You are called upon to note extraordinary circumstances in the prisoner; note them in the witness who testifies against him. Saturday he watched; Sunday he tried the doors of Webster. Why? Surely not to make the fires on Sunday, in the morning! Remember, no suspicions were then excited. Wherefore all this action before the suspicion? Now go to the day after. You see the vigilance before his suspicions were excited: see how it was after. On Monday morning—the very next morning after this deep and awful conviction came upon his mind—when he came to the overwhelming conclusion that the professor, his friend, the teacher, had been guilty of the most awful crime that had been committed in the community,—he goes into that room; he passes through that laboratory alone, that day, twice—three times, I believe, and once with the police! Yes, three times! He was there four times; three times alone, and with an opportunity to search just as much as he pleased! In the morning, Dr. Samuel Parkman first came there. Mr. Littlefield was not found by Dr. Samuel Parkman, who found, on the contrary, Mrs. Littlefield, and she showed him up to Dr. Webster's room, through the lower laboratory, and through the door of the laboratory stairs. Littlefield afterwards came in, ascertained that Dr. Samuel Parkman had gone up, went to the door by the laboratory stairs, and entered that laboratory. That is the first time that he enters that laboratory after the suspicion had come into his mind that Dr. Webster had committed this awful crime! Would not his eye naturally have fallen on every object that could have attracted attention? Would his vision have been closed to anything which would startle a man who was put upon his guard by the most grievous and horrible

suspicious? And yet, he passed through that laboratory to the upper room, heard a part of the conversation, and turned and went back! Opportunity ample! Dr. Webster he knew to be engaged. His own suspicions most strongly excited! Then he knew how those rooms had been watched and guarded, if he had been as vigilant as he says,—and yet, he makes no observations!

Afterwards, Mr. Blake comes there. He goes, to gain admission for Mr. Blake, through this same laboratory; and, finding the door open, goes through it, and makes no observation whatever! Then, again, gentlemen, that same day, Kingsley, the agent, and Mr. Starkweather, the policeman, go there to gain admission, in order to search in this college. Mr. Littlefield tells you that, many hours before they came there to make search, he had his mind impressed with an ineradicable conviction that Dr. Webster was guilty of this murder. If that was his conviction, if the police came there, armed with the power of the law, to investigate with regard to this matter, I ask you how a man with such suspicions would have conducted? Would he not have searched? Would he not have watched? Would anything that came within the range of human observation have been overlooked? Would he not have turned the suspicion of the police to everything? And yet, he says that he passed through that building in the most formal and imperfect manner, without a search at all.

Follow this subject up. Before this time, he was watching, and watching, and watching, these rooms. When his suspicions were grievously excited, when his convictions were most firm, he made no search at all!

Tuesday came around. The police came again. The convictions had not been eradicated from the mind of Littlefield at all. He goes with the police. Mr. Clapp says, "We do not suspect you at all. We are ordered to search this part of the city. The neighbors will object to our searching their houses, until after we have searched here." Mr. Littlefield says, that he believed Dr. Webster was a murderer; but he would not give a hint to that officer that it was worth while to be a little

more vigilant! And when he had got into the laboratory, and that inquiry was made about the privy, and Webster diverted attention from it, then Littlefield did not even say that it was necessary to be more exact! Nay, he was the least observant of all. Mr. Kingsley tells you that he made the discovery of the spots of nitrate of copper; and yet they escaped the attention of Littlefield!

In the nature of things, can it be that this suspicion should have existed, which would make everything deserving of observation, and yet, that Mr. Littlefield did not draw the attention of anybody to the spots, so plain upon every step, or even notice them himself? I say, the want of vigilance creates a suspicion and distrust in his integrity, which appeals to a jury for a careful estimate of his testimony.

Again, that same day, in the afternoon, that friendly intercourse took place. When Dr. Webster rang the bell, and Littlefield went to answer it, he gave him a turkey, and Littlefield thanked him. I must confess that I can hardly conceive how he could have taken that order from Dr. Webster, furnishing his Thanksgiving dinner—that food over which he was to be grateful to Providence for all the past favors he had received—and was taking it, as he believed, from the red right hand of a bloody murderer! He took it, thanked him, and they passed down together, towards Cambridge street, in friendly conversation; and when Dr. Webster asked him where he was going, he said, “To the Lodge.” “Then,” said Dr. Webster, “you are a Freemason, are you?” “Why a part of one, they call me.” And there the conversation ended, friendly and kind. He had just received from Dr. Webster this present, and was harboring in his heart this suspicion that Dr. Webster was a murderer!

I do not speak without proof; for Mr. Littlefield tells you that that same night, when he came from the Lodge, he stopped at Dr. Hanaford’s, and there spent an hour, during which he breathed out to him his suspicions against his friend, Dr. Webster. Can it be so? Can his conduct be explained

consistently with the idea that his testimony is to be taken as solid, substantial truth?

Go to the next day. The next day, in the morning, he watches. All the discovery is, that fire is made in the furnace. He goes away. In the afternoon, he returns. He discovers, in a strange way, the fire in the furnace. In passing through that dissecting-room entry, he says that the heat was so great he felt it upon his face. That is a great heat to arise from that furnace. You have been there, and have seen it; and I think it deserves the careful consideration of gentlemen, whether he could have discovered it. He felt it hot, and thought the building was on fire. Because the brick was hot, he thought the building was on fire! ! He attempted to enter into those rooms. He went to this small furnace. The fire was substantially down. How can this be? How the wall, on the outside, could give out so much heat as to make a person think the building was on fire, after the assay furnace had been substantially extinguished, is beyond my belief. I submit whether it is not beyond yours.

Then go one step further. Mr. Littlefield saw there was a strong fire here. He has this building to himself. His suspicions are vehement. He goes to the hogshead, to see if he can find the body of Dr. Parkman; but, was so observant of Dr. Webster's directions to him of his little affairs in that laboratory, that,—though he believed him to be a murderer, though this fire is strange beyond all things, and he was making it when Littlefield was watching him,—yet, even he will not take off a crucible, and did not do it! He left, without making any more of an examination about the body, except in the hogshead. I believe he discovered the acid at that time. But he did not go to the privy; and he made no effort to get in there, though he thought Dr. Webster had diverted the police from that place!

Thursday, he told his hired man. Then his conduct changes. He is gradually unfolding his suspicions. An axe is sent for to Harlow's and then he takes a hatchet and chisel, to see if he can find the remains of Dr. Parkman. Why should he go

there? It was the privy that Dr. Webster had excluded him from. Why not contrive some way or other to open the door, and get in there; perhaps all this pains-taking of getting in would have been needless. Why not go above? and, if the body was not found above, why not drop a light down the vault?—it would have shown everything. But no! this process was too simple. He goes below, to dig through the wall. But he works imperfectly; he does not accomplish it. Having got the axe from Harlow's, he went to work with the hatchet, but it does not work effectually. And yet, gentlemen of the jury, is it not a matter of some surprise—is it not a matter that requires some more explanation than a mere passing word—how it was that Mr. Littlefield had then made up his mind to undermine that college?

I believe the last reward for the body was published coincident with Mr. Littlefield's exertions to break through that wall. Though he disclaims all intention of claiming it, yet I can see no earthly reason why he should not claim it; for the parties are able, and he has been the object of some obloquy. His exertions were coincident with the last reward, which he now disclaims. He went to work with this mighty conviction, and yet he left that work unfinished and incomplete! Was it the conviction that he was upon the very track of the murderer, and that he should find, decaying there, the body of Dr. Parkman, which could, the next day, be carried off to some other place—and yet he delayed for want of tools! He went to the party, and danced eighteen out of twenty times, with the conviction that a dead man's bones were almost under his apartments at home, laid there by the hand of the wickedest criminal that has lived since Cain!

On Friday, he does not rise very early, or go to his work very early. And, what is very remarkable, at 9 o'clock, while he is at breakfast, Dr. Webster comes in, and speaks to him, in the same calm, easy manner in which he has spoken to others about Dr. Parkman; inquires after the news; and he then tells him what, but a short time before, he had been told by some one in Dr. Henchman's shop—the story that he had

heard of mesmerism, the cab, and the blood. I believe Henchman has been upon the stand, and might have been asked whether Dr. Webster made that statement without authority; but he was not asked. Littlefield says, that there are so many stories flying abroad, that he does not know what to think. And this was the conversation that took place when half the college wall was undermined, and when Littlefield was meditating the completion of it! In the course of that day, what strikes me as most remarkable is, that Mr. Littlefield, in all the long testimony which he gave, never once, from that moment Dr. Webster conversed with him in his kitchen, looked for, or sought to ascertain, where Dr. Webster was. I have looked at my minutes, and I cannot find that, from after the time on Friday when this easy conversation took place with him, that Mr. Littlefield even went to the laboratory door, or to the lecture-room, or anywhere else, to see if Dr. Webster was in the room. And, for aught I can see, he told his wife to watch whether Dr. Webster was coming, before having taken the precaution to ascertain whether Dr. Webster was in his laboratory. Now, this is Friday afternoon. Mr. Littlefield goes to work again. He goes then to the Messrs. Fuller—and, gentlemen, bear in mind the reason which Mr. Littlefield has given for this work, rather than that of finding the body of Dr. Parkman. He says, he could not go up town, without being told that the body was under the Medical College. He says he went to work there, to satisfy his own mind and that of the public; and yet, he had thought Dr. Webster guilty, and had not failed to mention it on fitting occasions—first, to his wife, then to Dr. Hanaford, to his neighbor, and to Trenholm, and, on Friday, to Drs. Bigelow and Jackson—the latter of whom said to him, “Do it before you sleep.” He borrowed, as I was saying, tools of the Fullers. He was engaged in a work as serious as you are at this moment: he was to find the body of a most respected citizen, who had been murdered: he was, by that finding, to charge another respected citizen with the crime of murder, which would consign him to an ignominious grave—and yet, mark his language! He joked with the Fullers about it!

And, at length, Starkweather and Kingsley, and, shortly afterwards, Trenholm, came. He had then accomplished his work, and perforated that wall. All he had to do was, to apply the force of the bar. A hole, the size of the bar, had actually been made. Two policemen, and the agent of Dr. Parkman came. Starkweather put this question to him, as he has testified, though Littlefield does not mention it—"Has every place in this building been searched?" Mr. Littlefield replies—"Yes, it has, except the privy of Dr. Webster." Remember, that Littlefield has said that the suspicions that the body was concealed there were universal in the community. He told Starkweather that every place, except the privy had been searched. "Well," said Starkweather, "let us search it now." "No," said he to Starkweather, in substance, "wait till Dr. Webster has gone home; he has got the key." I do not mean to say of the privy, but the keys of his establishment. "Then," said Starkweather, "I will come to-morrow morning." Why not then? Why not have had one disinterested witness, who might, at this moment, have testified about it? Why did he put off Kingsley and Starkweather, when the hole was actually perforated? Throughout the whole, those men had been there with him—those men who could have been vouchers for his integrity.

Mr. Littlefield talked with them about the crime of Dr. Webster. He made no secret, and had no delicacy upon the subject. And yet, when they desired to see beneath that privy, and when the hole was perforated, he sends those men away. And then came his friend, Trenholm, and he told him. But he said, "Away! begone, for twenty or thirty minutes, and come back." This is positively fearful. Why not now?

He penetrated that wall, gentlemen of the jury, exactly up by the wall on the north side, I believe, of that building; and there, almost in the very front of the hole he made, some few feet distant from the perpendicular line of the privy, were found these remains, with the water dripping on them from the sink.

Gentlemen, I bring to you the facts in the case. If they are

startling facts—if they demand explanations from Mr. Littlefield, which cannot be given—I bring them to you only that you may say what ought, in justice and in truth, to be deducted from his testimony. And if the chain be impaired by the want of credibility of this witness—if you, in short, do not believe, because of these internal difficulties, these intrinsic corruptions, in the testimony—then, gentlemen, this mass of net-work, these great theories and hypotheses of the government, crumble away, as the cloud and the mist are dispersed in the beams of the rising and refreshing sun.

Gentlemen, allow me to contrast, for a moment, with these considerations, affecting how far you must judge the credibility of Mr. Littlefield concerning the conduct of Dr. Webster, some other facts. Would Dr. Webster, gentlemen of the jury, do you think, have done all that has been found to be done in that building, if he had been the perpetrator of this crime? Do you think he would have multiplied proof, and made proclamations to invite suspicions upon him? That is unnatural. He would not have done what he never did before. Gentlemen, is it likely he would have scattered these remains, in order that they might have been most readily found?—that he would have made a fire, so as necessarily to attract attention? Why, you find improbabilities starting upon the testimony of Mr. Littlefield. You find corresponding improbabilities in the conduct of Dr. Webster.

And, let me approach, gentlemen, those considerations which have the strongest presumptive tendency to manifest the innocence of Dr. Webster. First, gentlemen, where are the traces of crime? Where are the marks of blood in this laboratory? The physicians have told you the quantity of blood in the human body. Has blood been found? A half a dozen spots on the left side of the pantaloons, and two or three upon the slippers, which have been in that room for years! The medical gentlemen say they cannot tell how long those spots have been there. That is all you can find. These clothes have been where blood is sometimes used, as *Prof. Horsford* testifies; and half a dozen spots are found, and that is all. Do

you think they came from Dr. George Parkman? And, except these traces, which might have been there before, there is not to be found the slightest mark of violence there.

Now, gentlemen, there is no mark of violence—either of blood, of stain, or of instrument. Nothing! The knife which is found is untarnished; the Turkish knife contains no blood. The floor is not marked with blood. There is no indication of violence! and yet, it is said, that, at noon-day, two muscular men met—muscular and strong, though advanced in life;—Dr. Parkman, a vigorous man, and somewhat powerful; Dr. Webster, such as he was;—that this mortal struggle occurred; that a mortal blow was given, and no blood was found, though the pavement was taken up, though the walls were searched, though the garments were ransacked,—and no blood found, save what has been mentioned, which might have been there years before!

The overalls were carried away, Littlefield says; and yet, Horsford testifies he found them there, after he came. The policemen used them for pillows;—I do not believe they rested their heads on blood. Professor Horsford has examined them, and he finds no blood. Is it possible that this crime can have been committed by Dr. Webster?

Again, if it is done, is it possible that he has done it without preparation? He is a chemist; he understands this power of his over the human muscle and the human bone. If he had meditated this murder, he would have dissolved to liquid every inch of Dr. Parkman's body and bones, in proper vessels, cut up as it was, in much less time than he had. And if he had contemplated this murder, would not the most effectual means have occurred to him? Would a man like Dr. Webster have been hacking and mutilating the remains of a mangled victim he had murdered, when he had by his side the means of destroying the identity in a few brief hours; or when he might have taken the key from the side of the dissecting-room vault, cut up his body to pieces, opened the trap-door, and put it down where it would be unsuspected?

There cannot be an improbability, in my judgment, greater

than this supposition, that he could have committed the murder without destroying all traces of the body. It overcomes theories, and hypotheses, and conclusions, and deductions, from these surrounding, and, as the government think, overwhelming masses of circumstantial evidence,—which are met by the fact, that there are no marks of violence, no proofs of crime, and a total absence of all means of destruction which he could have used. While, on the other hand, the imperfect, incomplete, insufficient effort to destroy a part of this body, by putting potash upon it and holding it over the fire, showing the work of an unskilful man, proves that it must have been an unknown, inexplicable being who did the work, which the government are now seeking to impose upon my unhappy client.

Nay, more, gentlemen! Nay, more! These improbabilities, that Dr. Webster could have done this thing, grow stronger and stronger, the more evidence is presented for your examination. At every turn you take, at every movement of advancement, these improbabilities are multiplied.

Follow Dr. Webster from that place. See him with his family that evening. The first part of it is spent as usual, with his wife and children. Then see him accompanying those children to a neighbor's family hearth; then going by himself to Professor Treadwell's, and spending two or three hours in social conversation—not absent-minded, not full of fits and starts, not frightened at the sound he has made, but self-possessed, calm, social, as usual. Were ever human nerves made that could do this? I pray you, Mr. Foreman, I pray you answer me. When life is jostled even when some little event occurs in our daily walk,—a disappointment in our affairs, the treachery, it may be, of a friend, the outbreak of some calamity falling upon us,—our families, when we return to the fireside, note that something has happened. Will not the tender and observing wife say to her partner, What now?

“What cloud upon your brow?

What fever in the brain? what anguish at the heart?”

Do the children, loving and devoted children, watch and note the first variation in the parent's smile—in the parent's cheerfulness; and can, can it be, that Dr. Webster should have committed this daring, atrocious, unspeakably great crime, and have then been with his wife, and children, and friends, unmoved, unaffected by the issue which has been charged against him? To be so, he was more or less than man. But, like you and me, he was a man.

I pray you, gentlemen, weigh this, weigh that, when you are considering these circumstances. The next day, in the morning, he was about to visit the family of Dr. Parkman, because, the night before, he had seen in the public papers—which I might produce here, but the fact is too well known, it is unnecessary—he had read in them, that George Parkman was missed, having had an appointment with an unknown individual; so that Dr. Webster knew that the friends, the family, and the community, did not know where Dr. Parkman was. He had but to keep silence, if he had committed this crime, and he had every reason to believe that universal darkness would rest upon it; and yet, gentlemen, with that full knowledge, but with a conviction that the crime had nothing to do with him, he comes to Boston for the express purpose of making known that he was the man. He saw Mr. Blake first, and told him; he saw Dr. Francis Parkman and his family, shortly afterwards, and told them: yet, gentlemen, all these communications are now to some extent turned against him.

Mr. Blake has represented that Dr. Webster exhibited something of agitation; Dr. Francis Parkman has, on the contrary, represented something of over coldness. With one, whom he held by the hand, he seemed too warm; with the other, oppressed with affliction himself, not at the moment in the best state of mind for observation, too cold and formal: and both the warmth with one friend and the formality with the other, are now circumstances brought against him, under which Dr. Webster is in danger of suffering, unless that danger be avoided by the calm and sober reflections of the jury. That is to say, they are to judge upon a new case in the affairs of men.

How to treat relatives, in such a case, I think no man can tell.

Dr. Webster came to tell his story, and he told it as well as he could; and I submit, that no prejudice is to come to him now, because Mr. Blake thought him too warm, or Dr. Francis Parkman deemed him too cold. Go with him further, and you find that he called on the City Clerk, at East Cambridge, and found that the mortgage was not cancelled; went to his study; was found there by the police; went home; and was lecturing to his class on Tuesday, while these bleeding monuments of crime were just, as it were, by the side of him. Can it be so? From day to day, gentlemen, his avocations show him receiving his friends, visiting his friends, occupying himself at home, calling at Fuller's and writing the check, and speaking of Dr. Parkman; being at the apothecary's, where he is told this story of the cab; at the tinman's, where the box is ordered, and where he speaks of the story of which he has been told everywhere, entirely easy and unaffected; and all this time, as they say, this forlorn man, if he be the villain they say he is, is as calm and quiet as his brethren of the profession, and as clear in his mind, and regular in his actions, as the sun in the morning. Gentlemen, it is not possible!

On Friday, the 30th of November, he was with his family. In the evening, came the officers and ministers of the law. They came, indeed, without authority—perhaps without authority which could wholly vindicate them, but in the belief that they had the right to make the arrest,—acting, doubtless, in perfect good faith. The ministers of the law—Clapp, Starkweather and Fuller—went to Dr. Webster's house, to make the arrest, on the discovery of the remains in the vault. Dr. Webster is found tranquil. Mr. Clapp, who knows him, addresses him, and tells him that further searches are to be made at the Medical College for Dr. Parkman, and he is required to aid. "Very well," said he, "I will go;" as candid as you or I could be. "Let me step in, and put on an outer garment." As they were entering the carriage, he said, "Stop a moment; I have left my keys; I will get them." "No matter," says Clapp, "we can get in very well."

They enter the carriage. A free and easy conversation takes place. They speak of Dr. Parkman; Dr. Webster speaks freely on that subject. The conversation changes. They converse on other topics,—the railroads,—and so pass Mrs. Bent's. Her place is spoken of. They keep up a calm and quiet conversation all the way to Boston; and this, on a representation that these officers had made, that they were going to search the Medical College.

Now, suppose that Dr. Webster knew that he had committed this crime. If he had committed it, he knew it. His rooms had been twice searched. He finds three officers, come late in the evening, to search again, at that time of night. If he had been guilty, do you think, gentlemen, that his nerves would have upborne him then? I know not the man that has the power of resistance, under such circumstances. Innocence could have carried him through; guilt would have prostrated him, because guilt would have assured him that he should be carried to the exposure of his guilt. And yet, he moved as calmly and as tranquilly as when he gathered his family around his daily table.

Allusion was made, in the conversation which we have mentioned, to the discovery of part of the garments of Dr. Parkman. They passed the second street leading from Cambridge street. Dr. Webster says, "You are going wrong; you have passed the street to the college." Mr. Clapp says, "The driver is a green fellow, but I guess he will bring us up right at last." Dr. Webster is still calm. They reach the jail. Mr. Clapp alights, and asks the gentlemen to descend for a moment. They enter the jailer's apartment. Mr. Clapp enters the inner apartment. They all enter; and then Dr. Webster looks round, in the dim darkness of the jailer's inner room, and asks, "What does this mean?" Mr. Clapp replies, "It is no longer of any use to impose on us; the body of Dr. Parkman has been found. We have been sounding round the Medical College. We shall search no more; and you are arrested as his murderer." Dr. Webster started back, with the simple exclamation, "What! me?" "Yes—you!" His voice sank,

as his heart did. "He attempted," said Mr. Clapp, "to articulate. He began to speak to me something about the crime; and I told him not to speak to me of that. He waited a little while, and asked that his friends, most respectable Mr. Dexter and Mr. Prescott, should be sent for; and I said, They cannot see you to-night."

Here is the man deceived. He knew he was deceived. They told him one thing, and meant another. No matter that it was for good and honest purposes—they did deceive him. And when he spoke, Mr. Clapp stopped him, and said, "Don't speak to me of your crime." Then said Dr. Webster, "Let my friends speak for me." "No," replied Clapp, "you cannot see them to-night." And he became as a child at its mother's breast—helpless! hopeless!—and he exclaimed, "My children! my children! what will they think of me?" Not, "How shall I escape?"—but, "My children! my children!"

He was left in this condition. A *mittimus* was put into the hands of the officer; and he was alone, in faintness of body, in feebleness, bowed and overcome as he was by the deception which had been used upon him—his faculties disordered—his mind broken and shattered by the shock which I know not how any man could bear. He spoke to Starkweather; who responded, "Don't ask me; it is improper for me to tell you;"—and he sank back in his chair, scarcely able to sustain himself, while a few short ejaculations fell from his lips, which instantaneously were put down on paper. And the very words he uttered in that state—awful, overwhelming, cruel state of mind!—are brought here by that officer, and detailed to you, to work out his conviction, closing with this most significant language, "No person has access, but the porter who makes the fires," in answer to the question put to him. Then he exclaimed, "O, I am a ruined man!"—language put into his heart and understanding, and almost into his lips! This police officer calls his attention to the man who had access to his room; and Dr. Webster, under this affliction, overwhelming and ruinous, was pointed to the janitor by the police officer, who did not tell him that he was wrong when he asked

him, "Who has access to your rooms?" And the exclamation follows, "I am a ruined man!" As if he had said, "Here I am, under arrest; they will not suffer me to speak; they will not suffer me to see my friends. There is a charge upon me; I know not on what it rests; I have been deceived. O, my children! my children!—what will become of them?"

It occurs to his mind, on the question put to him by the police officer, "Who has access to your room?"—"I am a ruined man!" Is that confession, after such a conversation as that, and under such circumstances? Will you say that the government have the right to consider such a confession possible?

Go with him one step further. Mr. Parker comes to see him. The prisoner, careless of his position, weeps for his children. Mr. Parker says to him, "Another family have been in distress for a week past;" and silence only follows—silence, only with some slight exclamations from the prisoner. Yet he willingly accompanies the officer, to visit the scene of the alleged murder. His rooms are broken open; and I call your attention to one great fact. He was helpless nearly all the time, from the moment that this great charge was made. But from all the witnesses you have it in testimony, that, if he became calm for a moment, it was not in the inner but upper laboratory. Remember, gentlemen, the occasion when he became calm. Remember that at that time the remains had not been exposed to Professor Webster. He had not been told where they were, or where they were to come from. But then he was most composed;—and when was that? It was at the time, gentlemen, that they were asking him for the key of the privy.

Professor Webster did not know that any hole was dug. If conscious of guilt, when they asked for the key of the place where he had secreted these remains, would he have been calm almost at that moment alone? A wrong key was tried, and brought back to him. He then said, "That is the key of my dressing-room." There, gentlemen, was a moment of calmness. That was at the very place and time when, according to the theory of the government, they were to go to the identical

spot where Dr. Webster had deposited these remains. Yet he was calm, comparatively. He went below, and the fit was on him. And, gentlemen, from that state and condition in which he was, he did not recover again. He said no more. He was overcome. He was the victim of circumstances. He was unmanned. It would be as unjust to take the falling word from his lips, at that time, as it would be to go to the houses of the insane, and ask for the ravings of the maniac, and carry them to the Court-house—that the victim might be sent off to an ignominious execution. He was carried to the carriage and fainted. Mr. Andrews said a kind word. I felt that it was so, when the witness was upon the stand; and I thanked the sheriff for having a keeper with so much feeling. He spoke a kind word to this suffering prisoner. But he was scarcely conscious of it. A few broken sentences escaped him. “You pity me; what for?” “Because of your excitement,” was the reply. “Oh, that is all.” And he subsided again, and said not another word. His night was cheerless—his cell solitary. It was but an indifferent place to a man whose mind was so harassed and his feelings quenched.

The next morning he was found in this same overwhelming prostration. A few hours partially changed him. He awoke to new life, and, with the little strength that he had, in the first moment of dawning reason, from this night of darkness, and agony, and shame, and mortification, and distress,—with the first dawning light of reason, he uttered, in simple but expressive language, the whole of his defence:—“I do not believe,” said he, to a man whom he was for the first time in sixty years to call his jailer,—“I do not think that these are the remains of Dr. Parkman; but I am sure I don’t know how in the world they came there.” Gentlemen, that is his defence. He cannot tell you how they came there; he asks you, gentlemen, to give care and scrutiny to those surrounding and pressing circumstances. He asks for leave, under the agis of the law of his country, to present himself, with that reputation which sixty years of life has given him. He brings the community around him, from the president of the university to

the mechanic at his bench. All classes cluster around him, and tell you what he has done.

And, gentlemen, it is the rule of law, that in cases of doubt, where evidence is complicated, where it is uncertain what conclusions shall be drawn from these mystifying masses of circumstantial proof,—it is then that the toil and the virtue of life come as a protecting shield, to say that he who in life has embalmed virtue shall at the last be saved by it! His character is here. He brings it, and lays it before you; and with it he brings all that he has done within, and around, and near, these awful remains of death, and of mutilation of the human form. He implores you to weigh them well: and he asks only that your consciences, when your last day's work in this court shall be done, shall be pure and free; that you shall have given weight to all his objections to the evidence of the government; that you shall look to this *alibi*, which appears overwhelming in its accuracy and positiveness; that you shall save him, in the hour of his affliction, to be returned to the world again, and yet arrive to that humble home of which no voice can adequately tell the sorrows that now sit there, or the joy that may yet be imparted to it!

God grant him, in this day of peril, a good deliverance! And may He grant it to you also, that you shall never reflect upon your final determination here, but with inward peace and inward satisfaction, that shall sustain your life, and crown you at the last in death!

THE ATTORNEY GENERAL'S CLOSING ARGUMENT.

March 30.

Mr. Clifford. In a cause, gentlemen, of the magnitude and the interest of the one now before us, I expected, and doubtless you expected that everything which human power could bring to bear upon it, in order to exonerate this defendant from the charge which the Grand Jury of this county have preferred against him, would be done—that all that professional fidelity, all that professional skill and adroitness, all

that human eloquence and ingenuity, could possibly advance in his favor, would be done.

And, gentlemen, in that expectation I have not been disappointed. The transcendant ability which characterized the closing argument in his behalf yesterday, shows that whatever conclusion the evidence in this case may compel you to come to, there has been nothing left unsaid or undone, which, consistently with the truth, could have been said, or could have been done, for this prisoner.

But, gentlemen, I had, if not another expectation, at least another hope. I expressed it to you, when I opened this case, a fortnight, nearly, ago: that when the evidence which the government had to array here before you against this unhappy man should have been all presented, I did hope that he could furnish some explanation of the terrible circumstances which had weaved round him a web that seemed to be then irresistibly contracting to his doom. I expressed that hope, gentlemen, I may say, with the sincerity of a compassionate heart. I expressed it, as a citizen of this Commonwealth of ours, who feels an interest in the great interests which are represented by him. And, I grieve to say to you, that after all that has been done, and all that has been said, that hope has been utterly disappointed.

Why, gentlemen, I call your minds back to the statement with which this case was opened; a statement of what the government expected to prove,—made, I submit to you, as I submit to the world, with a degree of moderation that indicated how sincere that hope was, in my bosom. I call your minds back to that statement of the outline of the proof which I expected to put in here: and I now ask you, upon your conscience to say whether that outline has not been entirely filled up; whether a single statement was made which has not been proved; whether the inferences which I then forbore to draw from those facts are not now pressing upon your minds, with a force that cannot be resisted.

I ask you, then, to consider how all that evidence has been met. We have waited long days, and weeks, and months, for

an explanation of these facts. This prisoner, although he has been the inmate of a cell, has not, you know, gentlemen, been, in the language of his Counsel, a forlorn and forsaken man, unaided, and unable to prepare himself to meet the testimony of the government. No! far from it. He has not, as my friend, the opening Counsel, asserted here, been compelled to sit by, the victim of prejudice in the public mind, arising out of public rumor, and waiting patiently till the day of his deliverance should come in a court of justice, by making his explanations and showing his proof.

“A victim of prejudice,” gentlemen? I put it to you, whether that statement has any foundation here. I ask you, whether the very opposite state of things has not existed in a degree unprecedented in our history; whether there was ever a man against whom the *prima facie* proofs that had met the public eye had sunk down so deeply into the public heart, who has had such forbearance shown him. There has been, from beginning to end, a degree of reluctance that is unprecedented, to admit the possibility of his guilt.

Gentlemen, it is a strange and eventful history which we can now look back upon, from the time that these mutilated remains of George Parkman were found in the premises of the defendant,—ay, and under his lock and key. It was the subject of an examination before a Coroner’s Jury, which was secret. But gentlemen, his Counsel here will do me, as the representative of the government, the justice to say, or to assent to what I say, that before this evidence which was taken down before the Coroner’s Jury had been read by me—before I ever passed my eyes over its pages—it was placed in their hands, for the purpose of enabling them to meet everything that was contained in it, and prepare their client for his defence.

It does not, let me say to you, lay in the mouth of this prisoner, or his Counsel, to come here and complain of any course which has been taken, respecting him or his case. Never, I venture to say, was a man put upon his trial for a crime that affected his life, who had received such consideration

from the government representative as he has received from me.

I am not aware that there has existed a single fact that has not been fully communicated and freely exhibited to the Counsel for the prisoner, to enable them to investigate, explain, and answer it, that, when they came before a jury of their country, they might be enabled to say. "We have known everything that the government have to prove; we have prepared our answer; we can explain, and here is the explanation."

Gentlemen, so it has stood: and when allusion was made to the fact of his being in that cell friendless and unaided; that there had been a secret inquest, when he was not present; that there had been afterward a secret investigation by the Grand Jury, where he was not represented,—did it occur to you to reflect, as that statement was made by the Counsel, that between those two investigations there was another occasion, when he was present, when he was represented by the ablest counsel that the ablest bar in New England could furnish him?—that he then, either with or without their advice, chose, not only to keep his own mouth shut and sealed, but to say to the government, to say to the world, "I am content, not only not to offer proof in exculpation of myself, but I am content not to ask even for what proof there is against me?" Gentlemen, between these two investigations, which have been the subject of almost a complaining and reproachful remark, this prisoner was brought into this building, before another tribunal, for a preliminary examination.

And, gentlemen, while there, upon the supposition that he was entirely an innocent man, intelligent as he doubtless is, what gentlemen, would have been his course? Why, to demand of the government to show their proofs!

I put it to the consciences of every one of you, if you were seized by an officer of justice, and were brought up upon the most heinous and revolting charge that could be made against a man, would you not turn round, after you had had twenty-four, yea, forty-eight hours of reflection, and time to recover from the first shock with which it struck you—powerful, even

as the Counsel has represented, though that first shock may have been—I put it to you, whether you would not have demanded that the government should show the proofs upon which they attempted to charge you, an innocent man, with a crime like this. Would you have said—I care not whether with the advice of Counsel or without it—“I am content to go into close confinement, to wait until the government shall find its convenience and its pleasure to try me, and to suffer this good name which I have been building up for sixty years”—as the counsel have told you— “to be blasted, and the whole civilized world to have that name upon its lips, in terms of reproach and execration; to leave my family to suffer the torture, and suspense, and agony, which must attend a charge upon a parent and a husband, like this, remaining unexplained and without an attempt at explanation?”

It has come to a point of consideration, in this case, that such a fact as that existed. And, more than that, gentlemen! The time has now come when that explanation was to be made when passion was to subside—when he was to enter a court of justice, and feel that, before a jury of his country, he could be secure.

And now, what is that explanation? I call your attention to the fact, that the evidence which he has put in here applies to but four propositions. And I call your attention to the further fact, that, upon that evidence, such as it is, have been founded four hypotheses, put before you by his Counsel; and it is my purpose, to put those two things together.

In the first place, in answer to all the evidence which the government has produced here, he has called the witnesses to his character. That is a point that never was in controversy, namely, that he had an outside reputation; how well founded in his real character, the other evidence in this case must determine, to a considerable extent.

The second point has been an attempt to show (I am now speaking of the evidence he has offered here) that for him to be locked up in his laboratory is not an unusual thing,—an attempt, from one witness, which has entirely failed, and which

has been met by other testimony, independent entirely of that which has received the harsh comments of the Counsel.

The first was the witnesses to the character; second, the attempt to show that his being locked in his laboratory was not an unusual thing. One witness only to that—Mr. Eaton, the painter. The third attempt was to show his own conduct, and his whereabouts, during the week which intervened between the disappearance of Dr. Parkman and the finding of his remains. That is the third proposition, as offered to be supported by the proof to which the evidence applies. And this case is to be tried upon the evidence.

The fourth proposition is, an attempt to answer this whole case of the government, by showing that after Dr. Webster and Dr. Parkman were together, on the 23d of November, Dr. Parkman left him, and was seen abroad in the community after 2 o'clock of that day. This is absolutely all.

Then, upon that evidence there has been an attempt to raise certain hypotheses, which I shall have to consider in another connection; but to which, when I do come to consider them, I shall ask you to apply the evidence in the manner that I have indicated.

Now, in a state of facts like these, as presented to a jury of the country, I think there is one proposition which cannot escape our notice. The constitution and government of this Commonwealth has, as its highest object—as it is the highest object of all organized civilized society—the protection of human life; and, under that constitution and government, we have a system of law, which is intended to carry out that purpose.

If a case has ever arisen which is to test and try the value of that constitution, and of that system of laws, it is the case now before us. And if ever the great and high responsibility of applying that test was confided to human minds, it is now confided to you.

Why, how does this case stand upon the proof? Is not all the charge attempted to be answered by the fact that Dr. Webster, this prisoner at the bar, moves in a different sphere of

life—that he has been subject to a different influence—that he has had a different experience, from those who are ordinarily seen in the prisoner's dock?

We are now to know whether the law under which we live is, or is not, like that Divine justice whose character it is our law's humble function to imitate and follow—whether it is a respecter of persons—whether it is competent to hold the weak and the impotent in its grasp, but is itself impotent when the high, the influential, and the powerful, are charged with its violation. It is an old complaint, gentlemen—

“Plate sin with gold, and the strong lance of justice
Hurtless breaks: clothe it in rags,
A pigmy straw can pierce it.”

But I thank God that we have here a state of society, a system of law, a sense of justice, to which no such reproach as that can be applied. Why, is there any doubt that George Parkman—the original proposition with which I started before you, when we commenced this case—that George Parkman, a highly respected, almost universally known citizen of this metropolis of New England, a man of large affairs, a man of extensive connections and interest, has been murdered? Ay, and, by a most remarkable coincidence, is there any doubt in your minds, now, after hearing all that has been said by the prisoner's Counsel—whether he were the perpetrator of it or not—that Dr. Parkman was murdered in the building of an institution which owed its erection to his munificence?—that, in the ordinary avocations and business and intercourse of life, he went out from his home to meet his sudden and fatal doom?

And, gentlemen of the jury, if that fact be established—no matter who was the perpetrator—if the laws of Massachusetts are impotent to ferret out, and detect, and convict, and punish the perpetrator,—then the sense of security and of safety, which belongs to us as the members of a civilized society, is gone forever. We had better go back, as we shall certainly be driven back, to that state of anarchy and of bar-

barism, in which every man's wrong is avenged by his own right arm.

And now I come to consider the improbability that a false accusation should be made against a man like this prisoner. Thousands of eyes, gentlemen, since that fatal event, which struck into and startled the heart, not of this community alone, but of the whole civilized world, have been opened, every circumstance has been weighed, every man has been watched—and the vigilance of our police, the keen eye of justice, stop here. If that be a false accusation, that of itself is another marvel and miracle, greater than any that has been presented as a mystery by the prisoner's Counsel. The complaint has been here that there has been no direct evidence—strong as the Counsel has admitted this mass of circumstantial proof to be—no direct evidence that the fact charged upon this prisoner is true; that the act committed by him, as charged in this indictment, was witnessed by any human eye, and that that witness has come here upon the stand to say so. Gentlemen of the jury, how many murderers think you have been punished, or ever will be punished, if a jury are to wait until direct evidence of an eye-witness is to be furnished to them, in order to remove all reasonable doubt from their minds? What degree of security will there be in society? How can we go to rest upon our pillows, feeling that the law gives us any protection, if a position like that is to be maintained. When crimes like these are to be committed, you will consider that men take no witnesses with them; they avoid the sight of all eyes, but that all-seeing Eye, which sees in the darkness as in the light, but which they then forget.

Let us consider here, for a moment, what the nature of this evidence is. Having considered its nature and character, and having furnished such authority, on that subject, as seems to meet and control all the suggestions which have fallen from the learned Counsel in relation to it, I shall then state, in a brief, and, I hope, intelligible manner, the law as applicable to the offence itself, and to the indictment which charges it. I shall then endeavor to proceed to satisfy your minds that no

other person than this prisoner could have committed the act. Having, in the first instance, considered the evidence that the act has been committed, I shall ask your attention to the evidence which goes to fasten and fix the charge upon him.

Now, gentlemen, what is the nature of the evidence upon which you are to arrive at your conclusion? It is circumstantial. So, I think, it must be said, is almost all evidence. We are not here, gentlemen of the jury, dealing with or expecting to find absolute verities—pure, absolute truth. That, gentlemen, belongs not to fallible man, but to the omniscient and infallible God. And we are here to exercise such instrumentality as, under our system of law, and in our state of intelligence, we may be able to use for eliciting the truth. And when we have arrived at a conclusion, through whose instrumentalities, and our reasonable doubts are all removed; then, our minds being satisfied, even if we err, no such terrible consequences to us can follow, as have been shadowed forth in the argument of the opening Counsel.

What is circumstantial evidence? Is it so much less satisfactory and strong than the positive testimony of a witness? Why, gentlemen, the testimony of a witness is not dependent entirely upon his integrity and veracity. The value of it, certainly, is not entirely dependent upon these. It is, in no inconsiderable degree, dependent upon his intelligence, his powers of observation. But if there is a class of facts existing, which, combined, lead the mind, by the stern and inflexible chain of logical sequence, to a necessary result, the mind must give to it its credence.

Let me, in much better language than I can use, and with a wisdom which I may never hope to equal, give you the exposition of this matter, from one of the ablest and most learned Judges now gracing the bench of a sister State. I propose to refer the Court to the case of the Commonwealth against Harman,¹ and the charge of Chief Justice Gibson, in that case, to the jury.

. ¹ 4 Pa. St. 269.

It was a capital case, as this is. It was a case of great interest—of a mother for the murder of her child. And the Chief Justice of that Commonwealth, Pennsylvania, who is now an honor and an ornament to the bench, in charging the jury, addressed them, upon this subject of circumstantial testimony.

I now come to the consideration of points of law upon which I shall address myself to the learned Bench in your hearing. They are all involved in the inquiry which you are now making. The ground that we take, may it please your Honors, upon the law, is established upon well-settled principles of the common law, as recognized in the case of *Peter York*,² and subsequently affirmed by this Court in the case of *Washington Goode*, and more recently in the case of *Knowlton*. Unless it appears, by a preponderance of the testimony, to have been done under reasonable provocation, such as the law recognizes, malice is to be presumed; and, malice being presumed, whether there is express malice shown by the proof or not, it is murder. Then, gentlemen, the distinction that was taken, and very properly taken—and, upon the authorities, fully illustrated by the opening Counsel—between express malice and implied malice, I do not intend to go over, because I entirely concur in every proposition stated to you on that subject, in regard to express malice. If you find there was anything of premeditation with regard to this prisoner, that ends the inquiry of this case. That fixes it, by all the authorities, upon the very ground taken by the prisoner's Counsel, to be a case of murder. But, if you should not be satisfied of that, still, the law presumes, in the absence of any controlling proof, that there did exist the other species of malice, namely, implied malice.

Therefore, it is quite immaterial, in sustaining this charge against the prisoner, whether the jury are satisfied of any proofs of the premeditation or not, unless they are, on the other side, satisfied upon the proof, that, when those two men came together, there was not merely exasperating, irritating and provoking language, but that there was, on the part of

² *Com. v. York*, 9 Metc. 93.

George Parkman, a provoking blow, which led to another from the prisoner, that was fatal to his adversary. Because, upon this matter of implied malice, the provocation which the law recognizes cannot be a provocation of language, no matter how exasperating, how irritating, it may be. Therefore, if exasperating words were used, and a sudden blow was given by the prisoner with an instrument likely to cause death, then, gentlemen, he is as much guilty of murder as if he had prepared and planned it for months before, and beguiled the party to the place, and there carried into effect his previous premeditated purpose. Hence, we take no exception to all that matter of law put into the case; and I only refer to it now, to say that you must have felt, as I did, a painful disappointment, when this case was opened by the defendant's Counsel—that, while we were anxiously looking for an explanation of facts, we had the extraordinary spectacle of the Counsel for the prisoner devoting two hours and five minutes to the discussion of the law, and ten minutes to the presentation of the facts.

All the nice subtleties and refinements of the law of homicide, about which there is no controversy, and in which I agree fully and entirely with the learned Counsel, were gone into with a degree of clearness and ability which marked the accomplished lawyer, and were presented for your consideration to avoid what seemed to me the unfortunate and meagre array of his store of facts being exposed to the jury. But gentlemen, that exposition had to come. I have already adverted to the classes of facts upon which he relied.

Exception has been taken, gentlemen, to this indictment; or, rather, perhaps I ought not to say that. I do not know as exception is taken to the indictment. But, although it is said that the government may charge, in the various modes in which they have charged, in the first three counts, a homicide committed by the prisoner,—yet, they are bound to prove, in this case, to the entire satisfaction of the jury, that the homicide was committed in one or the other of those modes; and that the fourth count of this indictment, in which the Grand

Jury have charged upon this prisoner, that, by some means, instruments and weapons, to them unknown, he did commit murder, is not such a count as can be sustained in a court of law.

Gentlemen, if that were so, we ought to have been saved the long and anxious labor of this trial. If that were so, and the law were open to that reproach, I think this learned Bench would require that very conclusive authority should have been produced to satisfy their minds of their imperative duty so to rule. Why, take the very illustrations of the counsel here—and I could not conceive of more cogent and effective ones—take the illustrations which he presented in support of that monstrous proposition—that if a man is so scientific in his deeds of blood as to be able to conceal the mode or the means by which he consigns his brother-man to a sudden and a violent death, although the fact may be proved upon him as clear as the daylight, he cannot be punished under the laws of Massachusetts! That is a most extraordinary and monstrous proposition. It may be that this Honorable Court may say that this is the law; but, the illustrations show us to what such a construction of the law would lead us.

Why, it is suggested that the lasso might have been cast around his neck. Was there any evidence before the Grand Jury which could justify them in saying, upon their oaths, that this was the way in which the murder was committed? It is perfectly true, that a galvanic battery might be so prepared as that, when a man is walking over the wires, he shall be prostrated, and deprived of consciousness. But we must have evidence of it.

The plain proposition is, simply, as laid down by Hawkins, 23d chapter, 84th section, of the second book, that, "in drawing an indictment for murder, or any other capital offence, the pleader must set forth the nature of the facts as specially as the circumstances will admit."

Now, if it was known to the Grand Jury how the act was done, of course, they must set it forth. If they should undertake, through their accompanying officer, to charge that the

homicide was committed in a way and manner to them unknown, and afterwards, when the party is put upon his trial, it should appear—and it might appear, for the jurors may be called to testify to such a point—that he was stabbed, or strangled, or his life destroyed in any other way, and this was known to them before the indictment was drawn, then it could not be maintained. And that is the protection of the prisoner. “The nature of the facts” would not have been, in such a case, “set forth as specially as the circumstances admitted.”

I will give you but one illustration, and I submit it to the Honorable Court, as an evidence of the absurdity of this proposition. I derive it from the case itself. Suppose, may it please your Honors, that Dr. Webster, with premeditation, had enticed Dr. Parkman into his laboratory, and had there, in a scientific manner, in some way to the jurors unknown, and also unknown to anybody and everybody, murdered him; and had succeeded—in the mode indicated by the counsel—in the space of eight hours, in destroying every vestige of that body, by acids, or in some other way. Then, suppose that four most respectable professors of that institution found the clothes of Dr. Parkman—he having been seen to enter, and not seen to come out of Dr. Webster’s room—and his pocket-book, taken by the prisoner from Dr. Parkman, in the possession of this defendant, and no vestige of his body. Then Dr. Webster says, taken by surprise, “I murdered him, but do not betray me.” These professors thereupon take him into custody. Not another word is said. Then, when he is advised by counsel, he retracts his confession, and there is no evidence how he killed him; according to the monstrous proposition of the counsel for the defense, he might have walked the streets of this city, and shown himself anywhere, free as the air, throughout this commonwealth of ours, and the law could not reach him! Now, if that is the law of this land, it is time it was altered. No! it is not so.

Gentlemen, I shall maintain, here before you, that if you are doubtful—and I admit you may well be—whether he died

by a blow on the head by a hammer, or by a stab from a knife—if you are doubtful how it was done, by what means, or instrument—and yet, if you are satisfied that Dr. Webster was the perpetrator of the homicide, that he did deprive Dr. George Parkman of life,—then, no matter how he did it, he cannot, under this indictment, escape the violated justice of this commonwealth. That is to be vindicated, were he ten times higher in social position, as much as though he were the humblest man among us.

Now, in order to come to the consideration of the evidence, I start with this proposition:—That the proof in this case must satisfy you beyond a reasonable doubt—and by that is meant a doubt for which you can give a satisfactory reason to your own minds, and to others, if they ask it; not a possible doubt; not that it was possible that some one else might have done this, but a reasonable doubt, that George Parkman has been killed. Proof must satisfy you, beyond reasonable doubt, that George Parkman has been killed by somebody. Have you a doubt of that? If you have, my labor is in vain. I may stop here, for the case stops here; and your faith, gentlemen, in anything else in this case, is equally vain.

Why, it is said by the learned counsel that there is no direct evidence that Dr. George Parkman is not now living; and it is gravely put to you, in the face of all this proof which we have had here, upon the testimony of Dr. W. T. G. Morton, and upon such improbabilities as the ingenuity of the counsel could invent—it is gravely put to you, as a question in doubt whether Dr. George Parkman still be in full life or no.

Well, gentlemen, what have we been doing here, for a fortnight past? What has been done before we came here? Have the solemn rites of religion been performed over unknown bones? Has his estate been administered upon, and have others succeeded to and entered upon the large responsibilities which belong to him,—and yet, is he still among the living? Oh, would to God it were so! Has there not been a search, which has brought into requisition, not only the vigilant police of this city, but which made every man in it a

policeman—a search such as never was had before? And no tidings or trace of him, living or dead, have been found, unless these mutilated remains, and these calcined bones, constituted parts of his mortal frame.

Why, it is said—

“The times have been
That, when the brains were out, the man would die,
And there an end; but now”

under the invocation of the learned counsel—

—“they rise again.
With twenty mortal murders on their crowns
And push us from our stools.”

Ay, gentlemen, to push you from your stools, which you occupy,—the seats of justice and the law. But the attempt will fail. I read it in your countenances—I read it in the proof which came from that witness stand—that you have no more doubt that those were the remains of Dr. George Parkman, than that this which I am now uttering to you is my living voice. Upon this part of the case there is not left a particle of doubt.

But we are to consider, what was originally intended to be presented as leading to this conclusion, but which, upon the strength of the proof, has now been tortured into making the foundation for another hypothesis—the evidence of the *alibi*, so to speak, of Dr. Parkman.

What was the original purpose and object of the counsel, in undertaking to show here that Dr. George Parkman was seen on Friday afternoon, the 23d of November, after two o'clock, and so along till 5 o'clock of that day? What was the original purpose of this evidence? Look back to the statement of the opening counsel for the defense, and you will see what it was. Did an intimation fall from the lips of my learned friend, the junior counsel, that their evidence was to satisfy you—what the senior counsel undertook to maintain as his hypothesis—that there was a separation of Dr. Parkman and Dr. Webster, which reconciles the testimony of both the government and the defense? That was for the purpose of satisfying your minds,

or rather of raising a reasonable doubt, whether the remains were proved to be those of Dr. Parkman. That was the object of it; for that was really the great point in the defense. Dr. Webster had started it very early in these proceedings, and under circumstances which made the declaration pregnant against him, that that was no more Dr. Parkman's body than it was his body. So they went over this community to find witnesses who could testify to having seen Dr. Parkman. And I venture to say, that from the fifteen or twenty whom they might have presented here, they selected the five whose stories most nearly agreed. Yet can you doubt that they might have had fifteen more? But it would have placed him in so many places at the same time, it would have been impossible for the evidence to be correct, without making him ubiquitous.

They have presented to you the testimony of Mrs. Hatch, Mr. Thompson, Mr. Wentworth, Mr. Cleland, Mrs. Rhodes and her daughter, and Mrs. Greenough. I shall examine, not only to show how fallacious it is with regard to his separating from Dr. Webster, but also with regard to the main proposition, that those were the remains of Dr. Parkman found in the laboratory of Dr. Webster.

Mrs. Hatch is the first witness. She places Dr. Parkman in Cambridge street, going up towards Court street, at about a quarter before two o'clock on Friday afternoon, Nov. 23d. This is all consistent with the statement of the government. It was some time in the course of the afternoon she spoke of meeting "Chin," as she called him. Suppose a mistake of only five minutes; and Dr. Parkman, being in Cambridge street, turns upon his track, while she passes on:—he turns again, and goes into Mr. Holland's store. But there is another answer to her testimony. I suppose it to be philosophically true, that two persons, between whom there is a general resemblance of feature, form and gait, would not be so likely to be mistaken for each other, as two persons who have some one peculiar and striking feature in common. Why? Because a general resemblance does not so much arrest the at-

tention, and strike the eye, as a single prominent peculiarity. And you see that the only impression that Mrs. Hatch received was, that she had seen a prominent chin. She had no conversation with him. She did not speak to him, nor he to her. She passed a person with a prominent chin. She spoke of it, in the course of the afternoon, not as Dr. Parkman, but as "Chin"; showing what had arrested her notice.

Take the testimony of Mr. Thompson, the biological witness. He saw him, he says, at about fifteen minutes past 2 o'clock, in Causeway street. He did not speak to him. He thinks it was fifteen minutes past 2 o'clock that he saw him, because he looked at the clock as he came away from East Cambridge. That clock, we have shown to you, by two witnesses, to be an unsafe and unreliable time piece; and especially when it was first put up last autumn.

He merely saw him passing. He may have made a mistake, as to the hour, or the identity of the person. I do not suggest that he made a mistake as to the day, but I think he did mistake the time, or, more likely, the person.

Mr. Wentworth testifies that he saw him in Court street, between half past two and 3 o'clock. The others saw him going at his usual gait. This witness sees him looking at the roofs of the houses. His attention is called to the fact of his disappearance, the next night; and he does not think it worth his while, notwithstanding the great public excitement, notwithstanding all the rewards, notwithstanding the suspense and anguish of desponding friends, to go and communicate so important a fact as this.

Neither of these witnesses, Mrs. Hatch, or Mr. Wentworth, saw him so as to observe his dress. But above all, with respect to Wentworth's testimony, he declares to you that Mr. Russell was with him—a gentleman whom we put upon the stand, and who says that he was with Mr. Wentworth on an occasion when he saw Dr. Parkman. Wentworth fixes it as the only time when he was with Mr. Russell and saw Dr. Parkman. Russell says he cannot fix the day, but that it cannot be the day that Dr. Parkman disappeared; for he heard of the

disappearance the next day, and is confident that it would then have come to his mind, had it been on the day of his disappearance. I regard the testimony of Wentworth to be so impaired, by this testimony of Russell, as to be valueless.

Next comes the testimony of Mr. Cleland. That testimony, like that of Mr. Rhodes, is dependent on two facts of memory that are independent of each other. If Mr. Cleland had said that he knew it was on Friday that he saw Dr. Parkman, because on Friday he met Dr. Parkman going into such a place while he was coming out, and he knows that he went into that place only on that day, and fixes it, by other evidence, that he was there, then he has but one fact, in respect to the time, to remember. But now he has two facts; the time when he went to see the Rev. Mr. Wildes, and the time that he saw Dr. Parkman. He does not fix the time, except by the notes. But whether it was on that day that he saw Dr. Parkman, depends entirely upon the confidence he reposed in his memory. Then there is the matter of identity. How did he see Dr. Parkman? Unquestionably we cannot doubt that there is a person whose slender form, whose peculiar gait, so resembles those of the late Dr. George Parkman, that he was very frequently mistaken for him. Mr. Cleland says that he has not spoken to Dr. Parkman for several years; that he did not observe his dress; that there were persons intervening; that he passed by him and did not nod, but thought that it was singular to see Dr. George Parkman walking with a laboring man, whom he at first erroneously supposed was in his company.

Then we have the testimony of Mrs. Rhodes and her daughter. I suppose it is a matter which may be referred to, without being put expressly in evidence, that the sun set, on the 23d of November, at thirty-two minutes past 4 o'clock. It is proved that that was a cloudy day. "I saw him from a quarter to five to 5 o'clock," says Mrs. Rhodes. How near dark was it? How did she see him? Approaching? No! Not till she got up side by side,—then she bowed to him. She did not say he bowed first. Suppose it was the stranger resembling Dr. Parkman. Suppose he met this gracious lady bowing to

him; he would naturally return the salutation, though she was a stranger. She bows and passes on, in the twilight. On Sunday morning, she first hears of his disappearance. She was a parishioner of his distressed brother, and it never occurred to her, through that Sabbath day,—never through the Monday following,—never through the Tuesday following, until Tuesday night, when her daughter returned from Lexington,—to communicate the fact. Then came the after-thought, that she had seen him on Friday afternoon, as late as 5 o'clock. Then she puts in another fact,—and I take the testimony of herself and daughter together, for it amounts to one,—another fact which is pregnant with significance; that Dr. Parkman, when she met him, was in company with a gentleman wearing a dark colored surtout, which she noticed as she passed him. Where is that gentleman? Why is not he here to tell us that he was walking in company with Dr. Parkman, on that day, at that hour, and in that place? Is not that fact conclusive that Mrs. Rhodes was mistaken? She is mistaken as to the day or the person, beyond all peradventure or doubt.

The testimony of Mrs. Greenough I need not comment upon. It was characterized by a fairness, by a scrupulousness, which I should have been glad to have seen imitated. "It was my belief; but I cannot be positive." Why, gentlemen? Because she reflects that he has never been seen in the world since. That nobody has seen him, is one of the elements to be taken into consideration in determining whether she saw him, or whether she was not deceived in her impression that it was he.

If we satisfy your minds that Dr. Parkman's bones were found in that furnace, his remains in that vault and in that tea chest, then that fact is just as much to be taken into consideration, to be weighed against this testimony to prove that he was seen after he entered the Medical College, as this testimony of the *alibi* is, against the fact of those being his remains, or the fact that he never left that building alive. And I undertake to say, that all this testimony, if it were in reference to an ordinary case of *alibi*, where the party was still liv-

ing—the testimony of six witnesses, who swear that they passed the person in the street, did no business with him, did not speak with him, that there was a person with him at the time, who does not come forward,—would be extremely unsatisfactory. If Dr. George Parkman were living, and in this court house to-day, trying an action against Dr. Webster for having stolen his notes of hand, and the only defense was founded upon this testimony of an *alibi*, I should maintain with confidence to a jury, that the evidence was, in itself, weak and insufficient. But what was Dr. George Parkman doing, on that day, when these witnesses think they saw him? Roaming about the streets;—now in Cambridge street, then in Causeway street; now in Washington street, going towards Roxbury; then in Court street, examining the roofs of houses. Again in Cambridge street, and afterwards in Green street. What was he doing? Was there ever anything so preposterous!

Consider this fact. I believe the city have made a computation of the number of persons that pass through Court street in a certain given time, during a business day. I do not remember the number, though I think I have heard. (A voice—"Thirty thousand.") Thirty thousand persons, in a day of twelve hours, as I am now informed. How many persons were there in the city who did not know Dr. George Parkman? Or, I might put it with more strength, how many were there who did know him?

Now, if Dr. Parkman were roaming about this city, as these witnesses describe, during the whole of that Friday afternoon, I ask you to say, upon your consciences, would they not have been able to produce here, to swear to the fact—not six, or sixty, or six hundred even,—six thousand rather! Do you suppose that it would have been possible for him to have wandered about this city during a whole afternoon, and no human being, except these six persons, to have seen him? Well, what is the evidence? That this great number of persons, who, if he had been in the streets, must have seen him, did not see him! This is shown by the search which followed immediately,

—a search of the greatest extent, vigilance, closeness, and scrutiny, that was ever made throughout this city.

But it is not merely the passing a person in the street, or on the opposite side of the street, or on the same side of the street, or having a mere passing glance, which, if we give any weight to experience, can give us a well-grounded assurance that we are not mistaken in this matter of identity. We offered to put in evidence here, that there were persons who accosted a man, believing him to be Dr. George Parkman, and found they were mistaken, when they approached to converse with him. We were not allowed to put it in. And why? Because it was a matter of common experience, as the Court said. And I put it to you, that it is a matter of common experience,—common to you and to me. I ask you, how many times you have gone up to a person, and spoken to him, or even attempted to take him by the hand, and then retreated with—"I beg your pardon, sir; I thought it was Mr. —."

You may have seen the District Attorney of the neighboring Courts of Middlesex, Mr. Train, by my side, during one day of this trial. In the last capital trial I conducted in that county, I met upon the sidewalk, near the Leverett street Jail, on my way to East Cambridge, on the first morning of the trial, a police officer of this city. As I passed him, he said to me, "Mr. Train, good morning." I stopped, having this very matter of the disappearance of Dr. Parkman in my mind, and turned toward him. He asked, "At what time shall I bring over the subpoenas?" "In what case?" I inquired. "The Pearson case," said he. "Oh, any time in the forenoon," I responded and passed on.

On my arrival at the court room, I mentioned the circumstance to Mr. Train; and, at my suggestion, he met the officer with a reproach, when he came with the subpoenas, for not bringing them sooner. "Why," said the officer, "you told me I could bring them any time this forenoon." "I told you?—when?" "Why, this morning, when you were coming over." "I have not seen you to-day," replied Mr. Train. "Why, certainly I met you, and talked with you." "You met me?"

"Certainly, I did." So confident was he of the identity, he was ready to have gone upon the stand, and sworn that he did talk with Mr. Train; and when I told him that I was the person, and told him precisely what the conversation was, for a long time, he honestly believed that we were playing a hoax upon him. Yet, gentlemen, the degree of resemblance between Mr. Train and myself is no greater than is found between many persons here present, and between Dr. Parkman and many persons now living.

I alluded, in the discussion to the Court of a question that was mooted yesterday, to the celebrated case of Sherman, in Middlesex. That was an instructive case, upon this matter of identity. A person was arrested, charged with having committed an assault upon a little girl in Medford, and another upon another girl in Newton. One assault was committed on Saturday, and the other on Monday. A week afterwards, this man made his appearance in Newton, and was recognized by two ladies, who had seen him when he was running away from the spot where he was attempting the assault. He was arrested, and brought before the magistrate. He stated that he had never been in that place before, which was untrue. The children were sent for, and, in a crowd of a hundred people, they both selected him. The parties from Medford came over, and they identified him also. He was indicted by the Grand Jury on two indictments, and they were both put to the jury at the same time.

The evidence of these two classes of witnesses, from both towns, nineteen in number, was laid before the jury. They were positive, clear and certain, in their testimony, that he was the person; the proof of identity was perfect and complete, when the government evidence was closed. The counsel for the defense, having received from the defendant a statement of his whereabouts, then traced him, by undoubted proof, through the whole week, and particularly covering the two days of Saturday and Monday. He proved, by most respectable witnesses, and the most undoubted corroborating circumstances and facts, that that man, on Saturday, rode out of

Nashua on a stage coach, and that on Monday he was at Manchester, in New Hampshire. The *alibi* was so conclusive the government were compelled to abandon the prosecution; the learned Judge saying that there never was so strong a case of identity as that made out for the government, except the case which had been proved for the defense. It was shown that there were two persons as like as the two Dromios, not only in countenance, form and gait, but even in the accidents of dress.

Now, gentlemen, to talk about a man's being satisfied, by a passing glance, that he saw a particular individual, who such a mass of proof as in this case tends to show was then numbered with the dead—who has never appeared since that fatal day—and to undertake to satisfy a jury of this, when all the probabilities are against the conclusion, seems to me like asking a jury to surrender everything that is proved in the case to the testimony of three or four witnesses to a fact in which they are more likely to be mistaken than any fact to which they could testify.

But, beyond and above all this, however your minds may be affected by this testimony, let me now meet the proposition of the counsel for the defendant, by saying that, whether these people saw Dr. Parkman or not, as they have testified, is entirely immaterial to your verdict in this case. If you are satisfied upon the other branches of this case, that Dr. Parkman's remains were found in the premises of this prisoner; and if the evidence connects him with those remains, then, what matters it whether Dr. Parkman was seen after 2 o'clock on that day or not? The Court will tell you that the time when this homicide was committed is immaterial. It may have been on one day, or another; it may have been at one hour, or another. And if these witnesses did see Dr. Parkman—improbable as it is—yet, if Dr. Webster, by some means and instrumentalities to us unknown, did beguile and entice him back to the college, and there obtain those notes, and did deprive him of life, then, gentlemen of the jury, it becomes entirely immaterial when it was done.

But where was Dr. Webster himself that Friday afternoon?

Where did he dine that day? Did the counsel answer that? Did his proofs answer that? Is the fact which the government have put in here disturbed one particle—shaken from its foundation at all—that Dr. Webster was at that laboratory, dinnerless and alone, with no lecture to prepare, at a time when the longest interval occurred between his lectures, viz., from Friday until Tuesday? Has that fact been shaken? And if he did dine anywhere, whether at home or abroad, would he not have shown it? He was arrested within a week. He had sagacious, acute and intelligent friends about him; he lacked no legal counsel, no anxious friendship, which would seize upon such a vital fact as this, and prove it before you. And if he was locked up in that laboratory at all that afternoon, whether he enticed Dr. Parkman back there and slew him at 4 o'clock instead of 2 o'clock, what is the difference? And thus, all this testimony about the Parkman *alibi*, as it is called, becomes entirely immaterial to the real issue before you.

But I now pass to the consideration of the identity. How is this proved, gentlemen of the jury? It is put to you as an open question; how is it proved? We have heard something said about the negative argument. I think it will be apparent, upon a little consideration and analysis of the testimony, that there is nothing negative in the argument which I shall draw from the facts proved here, independent of the teeth.

In the first place, the evidence shows, beyond all question, that the parts of a human body found in that furnace, and in that vault, and in that tea chest, constituted parts of only one human body. By the marvelous science and skill, so beautifully detailed to you here by that accomplished scientific man, Dr. Wyman, and by the testimony of those other intelligent physicians, who made the examination of the body—by the testimony of all of them, this fact is placed beyond the reach of doubt. In addition to that, it is evident, from all the testimony, that these constituted the parts of a body which was not a subject for dissection. That you can have no doubt about; the testimony of Dr. Ainsworth is that there was no subject, that belonged to the college, missing. He keeps a

correct record, and all his subjects were accounted for. It has not been suggested that any other person was killed or missing, except Dr. Parkman. And now take these coincident facts:—that here were the mutilated remains of a human body; that no subject was missing from the dissecting room; that no person had died, by violence or otherwise, whose remains were missing; no living person missing, except Dr. Parkman; and that these remains are found to bear every point of resemblance, and not a single point of dissimilarity, in form, age, or size, or in the fact that he wore false teeth,—I ask you, if anything can rest on human probabilities, what is the value and strength of this argument? Is it negative?

Why, you might take the entire community—ay, the community of the entire country and the world—and go through it, and select from it the man who most resembled Dr. George Parkman: let him be slain; let that man's remains be mutilated precisely as these were mutilated, preserving no more than were preserved of these; and the chances are as millions to one—ay, you cannot calculate the chances—that upon the remains of that person, or those portions of them corresponding to those found here, although there might be entire resemblance in most particulars, still there would, to the searching eye of friendship, and of long acquaintanceship, be some one little point of dissimilarity;—and one such point as would be just as fatal as if there were no resemblance at all. Yet here you find, from the testimony of the physicians, from the testimony of Mr. Shaw, of Dr. Strong, and others who examined them, and drew their conclusions, that they were the remains of Dr. Parkman, before Dr. Keep had ever examined those teeth, or it was known that Dr. Keep could have identified them. I ask you whether their opinions were not justified by this state of facts? I do not say that upon this evidence alone you would have been called upon to pronounce upon this question of identity; but I do ask you to consider whether all these facts do not reasonably justify the conclusion, to which his friends arrived, that those were the mortal remains of Dr. Parkman, and of no one else?

Consider it for a moment. Here is a portion of a human body, which has great peculiarities. There is no doubt about that. Mr. Shaw testifies to it. Dr. Strong testifies to it. There was the peculiar color, profusion, and length of hair; the peculiar shape of the jaw, with the fact of wearing false teeth; and the exact similarity in the height of the body. What are the chances that, among all these points of resemblance, there should not be one single point of difference, if they were the remains of another person? These resemblances may be said to be slight. Well, if they are, they are many; and a thousand threads, all running in one direction, and not one running counter to them, though they are as slight as the finest filaments of gossamer ever woven in the morning sunlight, yet by their very number and direction they may be strong enough to draw us irresistibly to the conclusion to which they lead. Why, gentlemen, of what is the cable made, that holds the ship to her moorings? Its separate threads may be snapped by an infant's hands; but, united, they resist the force of the tempest.

I come now to the positive, the demonstrative testimony; upon which I undertake to say, that you, as intelligent men, must be as well convinced, as if we had brought in here the entire mortal body of the deceased. I mean the testimony of Drs. Keep, Noble, and Wyman. And I approach it reverently, when I consider the circumstances under which this identification was made,—when I remember the long and patient labor of that conscientious man, Dr. Keep, upon the manufacture of a set of teeth for Dr. Parkman, that he might be present at the opening of that college building of which he had been the munificent benefactor—that it should happen, in the order of Providence, that in that very building, where he met his fate, that very set of teeth should have been found to identify his remains, and to vindicate his memory—ay, and to vindicate the law! I do approach it reverently. I seem to see in it the guiding hand of Almighty God, leading us to the discovery of the truth. And when that witness stood upon that stand, and gave us the history of his patient labors over those blocks of

teeth, the counsel here, able, and accomplished, and vigilant, as they are, must have felt, and did feel, that the great foundation of the defense, upon which they had hoped to build up their theory, was crumbling out, sand by sand, and stone by stone, from beneath them.

And consider, too, that these witnesses were no volunteers, in order to fasten upon this unfortunate person a charge so awful and revolting as this. No! Dr. Keep's own emotion indicated with what reluctance he had come to that awful conviction. Why, gentlemen, why? Not simply that these were the remains of his friend, but that they were also the remains of the friend of Dr. Webster, who was also his friend. He was his teacher; he saw how it tended to fasten and fix this act upon him—what an immense stride was then made toward the conclusion at which a jury must arrive, when that great question of identity must be settled beyond controversy or doubt.

The conviction pressed itself upon him, that this prisoner, whom he would save if he could, must be connected with the mutilated remains of one who had been, not only the benefactor of the institution in which he earned his bread, but his benefactor also, as these papers here well show you—the benefactor, the friend, of him

"Who should against his murderer shut the door,
Not bear the knife himself."

And he felt as any man of ordinary feeling would, at coming to such a conclusion as the truth required him to state to us—"I know those teeth were his, as well as if I had them entire in my hand to-day." That he could state this with confidence, take the testimony of the experts we put upon the stand, and what becomes of the miserable pretext which Dr. Morton presented, that such blocks of teeth could not be identified? They could be recognized, according to the beautiful analogy expressed by two of the witnesses. Drs. Harwood and Tucker, in the words of one, "as well as the sculptor would know the product of his chisel;" and the other, "as well as a painter, who had studied a face for a week, and painted it

upon the canvas, could know the portrait as his own work, wherever he might see it."

If anything more were needed, it is found in the conformity of the jaw of Dr. Parkman to the mould which Dr. Keep had; which mould corresponded with all the peculiarities of the jaw of Dr. Parkman, picked out from the smouldering ashes, and, by that true lover of science and uncompromising seeker for the truth, Dr. Wyman, put together, produced here before us. If he had produced here Dr. Parkman's right hand, with a scar upon it which every one of his friends had known, the evidence of identity could not be more conclusive. When we consider that here is a man in this culprit's dock, with such advantages of education and of culture as he has enjoyed, who is himself a devotee of science,—and we feel that he has so debased and betrayed his high vocation and mission as to have slain, either in anger or in cold blood, which ever it may be, his fellow man, and his benefactor and friend,—it almost sickens us; we feel that there is no shield for any of us against the commission of great crimes; that culture, science, and all the ennobling and purifying influence of education, are utterly lost upon us. To find them subjected to such base uses as that chemist's laboratory has witnessed, prompts us to exclaim, with the poet,

"Oh star-eyed science! hast thou wandered there
To waft us back the tidings of despair?"

But we recover and are refreshed only when we go to the other fact which this case discloses, that, although science had been debased to the purpose of destroying those remains, yet science, in its true vocation, in its nobler scope, sifts and penetrates those smouldering ashes, and evokes from them those materials with which it reconstructs almost the entire body which science had vainly attempted to destroy. This gives to us a renewed assurance of respect for science! And I cannot pass from this part of the case without expressing a feeling which has been often in my mind during the solemnities of this trial—the honor that is due to that noble profession through

whose ministers this assurance has come to us. When we have welcomed them to our bedsides, amid our trials and sufferings, we have loved and honored them; but when we meet them here, and see them taking the stand, as they do, most reluctantly, against one of their own brotherhood,—forgetting, or rather trampling under foot, all those considerations which arise from caste, from class, and giving themselves unreservedly to the truth, let it strike where it may, let it fall where it will,—they challenge and are worthy of the highest honor; and they have my humble reverence. One of their number, whom we looked to have been here, and whose aid, in another recent capital trial, I had occasion to seek—in which his testimony showed how much he would have added to the impressiveness of this—has passed away from us, since these investigations commenced,—a man who honored the community in which he lived, who honored the profession to which he belonged, and who, for the cause of science, has been removed from us too soon,—I refer to the late Dr. Martin Gay, whose testimony to that scene down in yonder prison, and over at that Medical College, would have been as valuable to us, as would his scientific testimony upon the question of the identification of the remains.

I now pass to the consideration of another proposition. I consider the matter settled, beyond all question, that there were found, in Dr. Webster's laboratory, in the vault, the tea chest, and the furnace, the remains of Dr. Parkman. The circumstances under which those remains were found, negative, without the aid of argument, the two propositions which have been presented by the learned counsel:—one, that he died by his own impious hand—that he committed suicide; the other, that he died by the visitation of the Almighty—a natural death. No man, it seems to me, can call upon counsel to argue a question like that. Why, gentlemen, to have died a natural death, and his body to be found thus mutilated, and mutilated there!—for what conceivable purpose? Is it possible that he committed suicide, and some person, in mere sport, had hacked those remains, and burned that head? Preposterous! Ab-

surd! Could his death have been innocent, with such a disposition of his body? No, gentlemen! It speaks louder than any language of mine can speak, that there was crime, as there was concealment, connected with these remains. This hypothesis was not pressed by the other side; it was thrown out as a suggestion—consistent or inconsistent as it might be with other propositions; and the inconsistencies of some of these I shall advert to presently. But this idea was not dwelt upon, and the counsel could not have entertained such an opinion. No, gentlemen! The circumstances under which those remains were found bring us conclusively to the conviction that crime was connected with the destruction of Dr. Parkman's life, by whomsoever it was done.

I now, gentlemen of the jury, come to examine the hypotheses which have been set up on behalf of this defendant. I ask you to consider whether any one of them even, taken alone, independent of the rest, is a rational, reasonable hypothesis, such as the law contemplates to negative the hypothesis which the government maintains upon circumstantial proof. I shall then ask you to consider how consistent with each other these hypotheses are. I think I cannot be mistaken, that the consumption of your time, upon this latter subject, will be superfluous. For, although that argument, which embraced these theories and propositions, was addressed to you in the most impressive language and manner, and although each independent and distinct proposition came from my learned friend with a force and fervency which I could not hope to rival, if I had the ambition to do so, still, I think, as fair-minded men, men of fair intelligence, you could not but have been struck with the manifest contradictions and inconsistencies into which his case had betrayed him. And yet, there was no help for it. He did all that mortal man could do. He had the truth of the case against him. And I do not know that an argument could have been framed that would have been more satisfactory,—certainly none more able and impressive,—than he addressed to you, out of the materials that he had at his command.

But what were the propositions? They were, that Dr. Webster admitted, what we had proved, that Dr. Parkman went to that college at or about half past one o'clock; that he paid Dr. Parkman the money, which we say the proof denies; and that, beyond this, he denies everything. Then the counsel undertake to construct their hypotheses. And what are they? In the first place, and most important, they disclaim, now that our proof is in and uncontrollable, all imputation upon Mr. Littlefield as having been the author of Dr. Parkman's death. If they had not done that in words, you, as a jury, would be bound to put your impress upon that hypothetical statement of what Mr. Littlefield did, or might have done. That came, as the counsel told you, in the fearless discharge of his duty. It may be that it was in the discharge of a duty that he put Mr. Littlefield, an honest man, upon his trial here, though he did not dare to make the accusation against him that his client had the hardihood to make before he came here.

The counsel knew that where we had corroborated Mr. Littlefield, he would stand unshaken; and that we had furnished them with the means of contradicting him, if his statements were untrue; and that they did not contradict him in a single syllable. I mean to present Mr. Littlefield just as he is. I mean that justice shall be done to him, if justice is not done to him who libelled him. But I now speak of it as a part of the counsel's allegations, that he disclaimed all imputation upon Mr. Littlefield, as having been the perpetrator of this crime.

But the counsel argues, supposing this to be the body of Dr. Parkman, it is not proved he died by violence; he might have died a natural death, and been stripped and robbed, and his body carried into the laboratory of Dr. Webster, and he not know it.

I have already had occasion to say to you, we are not here to discuss possibilities. It is no part of your duty, though it may be a part of the duty of the counsel. He could suggest nothing else. Why, gentlemen of the jury, he might, with almost equal plausibility, say that Dr. Holmes, the accomplished physician and professor, who entwines with his scientific

laurels the wreath of the muses—whose fame is precious to us all,—who is known and honored, and beloved everywhere,—that Dr. Holmes might have killed Dr. Parkman, when he was coming down out of his lecture room. But we are not dealing with possibilities.

Having dismissed Mr. Littlefield, and the other possibilities, the suggestion is, that the deed was committed by somebody out of the college, and the remains carried there. And that really seemed to be the proposition upon which the counsel rested. You see the inconsistency of his other propositions; if Dr. Parkman went there at half past one o'clock, and then went away, as Dr. Webster said he did, and thence to Holland's store, and bought his groceries, and then back again to the college, and was there waylaid and murdered, then all the testimony which they put in afterwards, of the afternoon *alibi*, goes for nothing. He never was seen out of the building, if that is true. If he was killed elsewhere and carried there, it involves another absurdity. The idea is that it was done by some robber or marauder, who waylaid him, and, after he had slain him, carried his remains to that college. For what? Why, the first suggestion is, to have them destroyed, or for concealment until the excitement arising out of his disappearance should subside; the other is, in order to get the reward which was offered for the discovery of the remains. Then it becomes quite material to consider what is meant by the suggestion that the criminal got in there that night, and by that mysterious unbolting of the door. Ay, and when was that? Friday night!—that was the night of the day of his disappearance. The robber and murderer was expeditious, upon the hypothesis that he separated from Dr. Webster, and was wandering about the city deranged that afternoon, and his body concealed in the college that night.

But how does this consist with the theory that he was killed elsewhere, and it was not until a search was made, and a reward offered, and when slander began to breathe upon Prof. Webster's name, and connect him with the disappearance, that this marauder, who ever he was, went and deposited the re-

mains in Dr. Webster's room, and there proceeded to dissect and destroy them? What is the proposition? Does it satisfy your minds, gentlemen? Does it raise a reasonable doubt? Remember that, whoever this marauder was, he was a tolerably competent dissector and anatomist; for the manner in which that body was cut up, in the expressive language of Dr. Holmes, showed it to have been done by a competent person—"There was no botching about the business." No, gentlemen; he left

"No rubs nor botches in the work."

So that, whoever he was, he was a tolerably skilful anatomist.

More than that—he was something of a chemist. Do you remember the testimony of Dr. Charles T. Jackson, confirmed by one of the other medical witnesses? It was he and Mr. Crossley, who, with Dr. Gay, made the examination. Their testimony, independent of that of Dr. Gay, is, that they took portions of the muscle of the thorax, and found that strong alkalis had been applied to it, which is known to chemists to be a most efficient mode of destroying flesh. "But, after slander had begun to whisper against the good name of Dr. Webster!"—there were rumors, were there? there were slanders, were there? which began to blow upon his good name!—gentlemen, I ask you to consider, as men having faith in Providence, whether it is likely that unfounded suspicions could attach to such a man as Dr. Webster, of having committed an act like this.

More, gentlemen!—and this answers a very considerable portion of the theory advanced by the counsel—I ask you if you believe that it would be possible, in a community, like this, distinguished for its intelligence and its humanity, that such a man as Dr. Webster could remain, not under suspicion only, but under an accusation like this, for four months together, and no hope-giving trace or indication of his innocence be discovered? Why, gentlemen, what interests have been involved in his innocence, if it could be made to appear!—what anxiety and solicitude have been felt by all the friends of good order, of education,—of that beloved University, the cherished child

of our Pilgrim Fathers! If one of the officers of that university were charged with crime, he would have, as this prisoner has had, not only the sympathies, but the repelling disbelief, until proof forced its convictions upon us, of every man in the community. Do you suppose that suspicion upon such a man as that could ripen into accusation, and that accusation into an indictment, and that indictment into trial, in a community like this, and the world sit down quietly and let it all go on, if he were an innocent man? But it is further urged by the counsel, that, before suspicion had begun to be aroused, even as early as the Friday night of Dr. Parkman's disappearance, the person who carried the remains there got into that building in some incomprehensible way, and hence the door was found unbolted in the morning. You remember how impressive the counsel was about that unknown person, who might thus and then have effected his entrance into the building. This, of course, is utterly subversive of the other theory, if it has any foundation in the proof. But I think there is another suggestion worthy of your attention. On that Friday night, after 1 o'clock in the morning, and up to 1 the next day, who testifies of the whereabouts of Dr. Webster? Who, beside him, had a key to that door, except Dr. Leigh? The facility with which Dr. Webster flitted between the Medical College and Cambridge has been made apparent to you by the testimony of his own witnesses. I, too, think the unbolted door had some connection with these remains, but not that it bears upon any other person than the prisoner. I cannot imagine that there was some murderer outside who carries these remains there, because suspicion had begun to breathe upon Dr. Webster. That would imply that this body had been put there at a very late period in the week.

But, in point of fact, gentlemen, until these remains were found on the premises, and until that startling discovery was communicated to the police, there was no evidence of a general suspicion against the prisoner—none whatever, until Friday, the day of his arrest. Then, undoubtedly, it was a matter of remark. There is no doubt but that, with regard to the

college, public sentiment had been decided before that date. But, let me say that the public are not prompt to entertain an unfounded charge, of a great crime, against a man who is set so far beyond the reach of suspicion as to make it require proof upon proof to connect him with the transaction. But what foundation is there for any such theory as this? There has appeared nothing yet, nothing whatever, to point at, or implicate, any such third person. And upon what are you to try this cause, gentlemen? "Hearken to your evidence," was the admonition with which you commenced your patient and protracted labors in this trial; and you are to take it all. I shall consider how much has been added to it by the defense, by and bye.

Four months have now elapsed, and neither time, place, mode of death, nor any other circumstance, has directed attention to any third person; nobody else is suspected. It is idle, it is absurd, to suppose, in a state of evidence like this, that any one else committed the act which all that evidence tends to fix and fasten upon this prisoner.

There is a further suggestion—and I will answer it now—that the remains were carried to the Medical College with a view to get the reward.

I understand, from my learned friend—to whose argument, to whose efforts, I am certainly disposed to do entire justice—that he used the matter of reward in connection only with this consideration: that it might be remarkable that the offering of the reward was coincident with Mr. Littlefield's commencing the search for these remains. The fact is not so; but, if it were so, what an absurdity it would be, connecting it with anybody! That a person should deposit there and afterwards find there, what?—not that portion which has been satisfactorily identified, but parts which could not be identified! How absurd, that he should have destroyed all those parts of the body by which identity is ordinarily proved, and to which we must resort to prove it—the head, hands, arms and feet—and then undertake to find the remains which were concealed in the vault, for the purpose of getting the reward, when the great

question would be, in the first instance, whether they were the remains of Dr. Parkman or not.

You will remember that all Mr. Littlefield found were the portions deposited in the privy vault. He did not find the portions in the tea chest, or the bones and teeth in the furnace, and he gave no intimations by which they could be found. He found simply the pelvis, the right thigh, and left leg. And how did he find them? I shall consider that in a moment. The proposition, then, that they were put there for the purpose of obtaining a reward, is preposterous.

Then take the other proposition. Could any man in his senses have undertaken to destroy those remains in Dr. Webster's laboratory?—in the day time, remember, when he was there, as we show, not by Mr. Littlefield alone, but, as they show, negatively, by their own evidence. For it is a most remarkable and significant fact, that the three daughters of Dr. Webster, who came here to testify in the defense, have, by their own testimony, in a most remarkable degree, confirmed and corroborated Mr. Littlefield. They put their father away from home at the very time Mr. Littlefield puts him at the college, and Mr. Littlefield puts him away from the college at the very time they put him at home. There is no conflict, but a perfect harmony, between the testimony of these witnesses. Now, the absurdity of any person's doing such a piece of work as this, in that laboratory, without the knowledge of Dr. Webster, is manifest. Suppose they had secured their opportunities, when he was out? There was that assay furnace, in which, upon the evidence, a fire had never been kindled before. Do you think Dr. Webster could have had a person there, and a fire in the furnace, without his attention being attracted to it? For what purpose would any other individual do this? Who would be so fatuitously presumptuous as to attempt to fasten upon a man in Dr. Webster's position an accusation like this and by such means as these?

Now, gentlemen, I intend to state to you two or three propositions upon this subject, which, I think, are clearly met by the evidence in the case, and sustained. If Dr. Parkman had been

killed in that college, and his body never carried out, but subsequently conveyed into Dr. Webster's laboratory, for concealment, or for the purpose of being consumed, then it is evident that either Dr. Webster or Mr. Littlefield must have known it. I think that we cannot escape from that proposition. Their hypothesis is, that some assassin might have lurked in the entry—a little space of eight feet wide—and, as he came out of Dr. Webster's room, waylaid and slew him; and that he carried the body either to Dr. Webster's laboratory, and ran the risk of being detected by him, or into Littlefield's apartments, or some other portion of the building, encountering an equal risk of being detected by him. The idea of an assassin's laying in wait, with a hundred students all around him, and with a janitor near, and the front door broad open to the street, is as absurd as for a man to lie in wait in the Merchant's Exchange, at mid-day, with the intention of committing a secret homicide.

Then, we come to the next hypothesis. Was Dr. Parkman killed outside of the college, and his body brought into the apartments of Dr. Webster? If so, it must have been brought there for one of three purposes:—Concealment; to be consumed and destroyed; or to fix the charge of murdering him upon Dr. Webster. The last I have already considered. With regard to the first, concealment, it is obvious that it could not be accomplished, because Webster or Littlefield must know it. The idea of going into his laboratory, to burn a body in his furnace, and to conceal it from him, is as absurd as it would be for him to come into this crowded court room, and undertake to do it here.

Was the body to be consumed and destroyed? All the evidence shows that this could not be done without his knowledge. Drawing off the water, burning up the fire-kindlings, so that only a small quantity was left, packing his knife in the tea-chest, using up his tan, spilling his nitrate of copper upon the stairs, penetrating into his private room to get the twine,—and the fact of that twine's being kept in Dr. Webster's private room my learned friend found it convenient not to remem-

ber—the grapplings and twine being all together in that private room, in a drawer,—now, I ask you, if any stranger could have done this, and Dr. Webster not have known it? I put it even upon a possible hypothesis. I anticipate your answer. The idea of fastening suspicion upon Dr. Webster—what is that? It is not shown to you that he had an enemy even in the world; it is impossible to imagine that any man should have possessed the temerity of fastening the charge of murder falsely upon such a man. And yet, if that had been attempted by anybody, what would have been the natural course? Why, he would have taken the dead body there, and left it in its unmutilated state. Found under these circumstances, it would have been conclusive. What was the probability of its being found? Suppose this hypothesis to be true—the man who killed him outside the college, in order to fix it on Webster and get the reward, did nothing to discover it.

Mr. Littlefield found those parts under the vault; Officer Fuller those in the tea-chest; and Coroner Pratt, or Marshal Tukey the bones in the furnace. If that is true, this unknown, possible person took the most incompatible modes of carrying out his intention, and adopted the most efficient means to defeat its fulfilment. I am addressing reasonable men. My learned friend, pressed as he was by the strength of the circumstances, was driven into these inconsistent propositions, absurd and ridiculous as they are; and he had the ability and skill to present them in a most impressive manner.

My duty is to call you back to the testimony. There are, in this case, two or three great, overshadowing facts, which, long ere this, would have sent any common culprit a doomed convict from the prisoner's dock. Before adverting to them, let us consider the other proposition, which has not been made—not in terms been made—but which has been indirectly attempted to be maintained;—I mean, the proposition that Mr. Littlefield is not to be believed. And why? Because, as the counsel was compelled to say, that, if he was believed, it did make this case a strong one against the defendant. Gentle-

men of the jury, why is he not to be believed? By what rule are you sitting here, as his fellow-citizens, and under the sanction of your oaths,—by what rule of evidence, by what rule of law, by what rule of justice, by what rule of right, are you to say that Mr. Littlefield has not entitled himself to your credence?

There are various modes of impeaching a witness. One is, by attacking his general reputation for veracity. That gives him an opportunity to sustain his character by counter testimony. If the counsel here had undertaken that mode of attack, they knew very well that, like the unskillful engineer, they would have been hoisted by their own petard. They knew that we could present ample evidence, both to corroborate his statements, and to sustain his character for truth and veracity. Another mode is to impeach him, by showing the conflict of his testimony with that of other credible witnesses. No such conflict is found here—corroboration and confirmation rather. A third mode is, to show the inconsistencies and discrepancies in his own testimony. This has been attempted—with what fairness or success, we shall see, and you are to judge.

I have another consideration to present, which, I think, is demanded by a sense of justice to an humble and honest man. To him, and to his wife and children, his reputation is as dear as that of a college professor is to him, and, in the eye of the law, is entitled to equal consideration. When I remember the load of obloquy which, coming originally from the defendant's lips, has been borne by Mr. Littlefield; the imputations which have been heaped upon him, so that, during the rest of his life, abroad or at home, his name must ever be associated with this terrible tragedy,—when I remember that those children of his must have it said that Dr. Webster, and Dr. Webster's friends, and the reckless and thoughtless who sympathized with him at the risk of injustice to others, imputed to their father, if not a murder, a most foul and unrighteous conspiracy,—when I remember, also, that he has been here upon this stand an entire day upon his examination, and taken up, on another day, and subjected to a cross-examination by those

who rank with the ablest cross-examining counsel in Massachusetts, and been subjected to all the scrutiny and sifting which their masterly powers could command; when, if he was untrue, if he was open to contradiction, his falsehood must have been exposed,—and when I reflect that he has gone bravely through it all, that he has come out of the fiery furnace of an ordeal like this, without a trace of fire upon the garment of truth which he has worn,—I put it to you; whether he shall longer continue to bear the imputation cast upon him by this prisoner, and which, with a less directness of charge, his counsel have now undertaken to impress upon you and upon the community! I challenge your sense of justice whether that shall not be put to rest forever!

Gentlemen, are we here in a Christian court room? If he had contradicted himself, or been contradicted by others—if he had been proved to have done anything which opened him to such an attack—I should not, most certainly, stand here to defend him. But he is charged with having told you an improbable story. We will see if he has done so, in a moment. My present purpose is, to show that injustice is done to the man. If that is the case, there is no defense for Dr. Webster. For it is certain, that, these remains being there, it must have been known to Littlefield or Webster. And I think, besides, it could not have been known to Littlefield, without having been known to Webster.

I do not put Mr. Littlefield upon this stand as a man of culture—of nice, delicate moral sense; but I put him here as an honest man, who fills reputably his position in life—a useful, though humble one—and in that position commands the confidence of those who know him best, and are best able to judge of him. During all this period, when the keen, sharp eyes of the police were upon him; when, as Constable Clapp tells you, and as Mr. Kingsley confirms him, every nook, and corner, and crevice, every pocket, every place on his premises, was searched; when they had their eyes upon him, scrutinizing him every moment,—that nothing should have been discovered,—that, what is of more importance, he should have been re-

tained in his place, ever since, by those very professors whose associate had been taken off to the cells of a prison upon his accusation, thus manifesting their confidence in the accuser, if not their conviction of the guilt of the accused,—I say, that, under these circumstances, he is entitled to some expression of their sense of justice, from the whole community, if there is any sense of justice left in it. It shall be no fault of mine, if he does not obtain it. So far as my humble voice can bear witness to my convictions of his truth, I should feel that I was false to every sentiment of justice, to every conviction of duty, if I did not utter it.

Where, then, do we show Mr. Littlefield to have been? And where do they show him to have been? For, if he was not where the government proves him to have been, they could have called these persons to have contradicted him. They could have called Drs. Holmes, Jackson, and Hanaford; Messrs. Harlow, and Thompson, and Grant, to show whether he spoke the truth. But he could not. I should have added, also, the members of the Suffolk Lodge, where he went on the Tuesday night. All his whereabouts, during the week, have been open to contradiction. He had spread himself just as broadly as the counsel could desire. There is not a syllable of conflict. A miserable attempt was made to show, by the old man, Mr. Green, that he had said he was present when the conversation took place with Dr. Parkman. Even he concludes, that, upon the whole conversation, he was mistaken in his first impression. But the very man who took part in that conversation is put upon the stand—Mr. Todd—and proves conclusively that he did not say any such thing.

Now, Mr. Littlefield is entirely uncontradicted here. Let us see what his conduct was,—and I shall go over it more cursorily than I otherwise should, if I did not rely upon this proposition, which you will assent to, that in all that Littlefield has said, he has been open to contradiction. He has been carried over all this period of time; and he has not been contradicted, he has been left unimpeached, and by counsel who would leave nothing undone which could be done to serve the interest of

their client. Then, I say to you, that I think you are bound to receive and accept the testimony of Mr. Littlefield as true. For whatever there has been in it that has been the subject of comment—that looks unreasonable—we have an explanation. In my view, there is not a single act testified to that is not perfectly explicable, and explained by the theory that he had conceived a suspicion, which, in my opening statement I put before you, he conceived as early as Sunday night. The fallacy of the argument of the counsel will be shown, in commenting upon Mr. Littlefield's testimony. He asked why he did not do this, or that. "Extraordinary conduct," he exclaims, "that Littlefield should have gone to Webster's room Friday night, after coming home late in the evening!" He took that fact, without considering the others,—that he went, at the same time, according to his custom, around into the dissecting-room and the entries, to fasten up the building. Why should he not try Webster's rooms also?

There are other objections to his testimony:—"receiving the turkey"; "heat of the fire felt on his face, as he passed through the entry." Are these suspicions and extraordinary actions? The whole fallacy of the argument is, that the counsel proceeds upon the assumption that Mr. Littlefield's suspicion, on Sunday night, was a settled conviction. Mr. Littlefield has not the command of language. When he says he has a suspicion, what is it? Consider the relations of the two men. Here was Littlefield, conceiving, on grounds which I think you will justify, suspicions against his superior, upon whom he was dependent, in some degree, for his daily bread. Those were checked by his wife—"For mercy's sake, don't ever say or think of such a thing again." But he could not help thinking of it. Originally, when Dr. Webster told him, with his downcast eyes, that he had paid Dr. Parkman, and that Dr. Parkman grabbed the money, and ran off without counting it,—when he found, in connection with this, that Dr. Webster pursued the unusual course of keeping his doors closed against him,—why should he not entertain the suspicion? When Dr. Webster went on, through the week, in the

same way; when he was learning that public sentiment was settling down, decisively, upon the idea that Dr. Parkman's remains would be found in that college, and nowhere else; when it came to the point that that college might have been the scene of a riot and a mob,—then he commenced a search in the only place unexamined—acting upon that honest suspicion, early conceived, honestly entertained, but still cautiously acted upon,—cautious, because, if it should turn out to be erroneous, where would he be? Suppose he had undertaken to have broken through the door of that privy; what would Dr. Webster have done, if he had caught him there, and his suspicion had turned out to be unfounded? It was not a conviction that he is to find anything, not a probability, not an expectation, perhaps, but a suspicion, arising out of Dr. Webster's conduct. Was he the only one? Were there not suspicions from others, who had interviews with him? What was Mr. Samuel Parkman Blake's feeling, when he came from that interview? And yet, Mr. Littlefield is denounced, for having entertained a suspicion which he did not consistently act upon. I maintain that he did act upon it consistently, when you consider the relations between him and the professor; and that he should have gone, in the manner he did, to Dr. Jackson and Dr. Bigelow, shows the confidence of his suspicions at that time. That he should have created no disturbance, and have made a very cautious, hurried, and imperfect examination, when he went in on Wednesday, is perfectly natural.

I may as well answer, here, the objection of the counsel, that he took the turkey. Why should he refuse it? Should he refuse the only present ever given him by Dr. Webster, and thus tell him his suspicions? It don't appear that he ate it. But it does appear that he did not dine at home on Thanksgiving day; so that all the pathos and poetry of my learned friend, about his eating that consecrated meal, received from a murderer, is entirely lost!

Then the warmth of the fire felt on the face! Why should he not feel it? As I understand it, when there is an intense heat in that furnace, the wall would be heated after the fire had

gone down: and the heat of the wall need not have to be very great, in order to feel the warmth in a narrow passage. Is there anything in that objection? At all events, Mr. Littlefield swears to it, and he is an unimpeached witness;—and I feel authorized to say of him, as the counsel did of another witness, an unimpeachable one.

Then the search made in the laboratory! Why didn't he break into the privy-door? He had alluded to it once, in the presence of the police, and they did not choose even to ask Dr. Webster to open it. He was not going to expose himself to the maledictions of Dr. Webster, if he should find nothing there. But when the cloud thickens around the college, he communicates his suspicions to the professors, and one of them tells him to go through the wall before he sleeps. Why should suspicions attach to my friend, Dr. Bigelow, or to Dr. Jackson? Why didn't they say, "Go into that privy, and put a lantern down, and discover what you can?" You are not to assume that something decisive had been discovered about Dr. Webster, and that Littlefield knew that the remains were there, or that he suspected that they were there to the degree that the counsel seems to believe. He held the suspicion cautiously, as a man naturally would hold it, and acted accordingly. Then there was secrecy pledged on the part of Dr. Jackson. Of course, secrecy! Secrecy all through, until something was discovered! And when those suspicions ripened into certainty, as they did when the remains were found, then, if Mr. Littlefield were not an honest man, and an honest witness—if he had a purpose to implicate Dr. Webster, why did not he point out the tea-chest? Why did not he point out the bones? He did neither.

Now, gentlemen, if there is anything, in any system of law, which lies at the foundation of all justice, it is that, if a man is to be put upon his trial, he should first be accused. And that is what my friends on the other side have been insisting upon. They say that we have not charged Dr. Webster with sufficient precision, in our indictment. They did not undertake to charge Littlefield at all; and yet they undertake to try him; and it is the breath of an advocate alone which is to

fix and fasten infamy upon an honest, though a humble man. Gentlemen, is that justice—Christian justice? Let them come out! Let this prisoner have come out, through his friends and his counsel, and, in the open face of day, have undertaken to fasten this charge upon Mr. Littlefield, and it would have been met—successfully, decisively met! Remember, gentlemen, that, at a critical period in the history of these events, this prisoner and this witness, Littlefield, have once been face to face. Littlefield has confronted him. The dependent has stood up before the superior;—the superior has been dumb before the dependent!

Remember the testimony of all the witnesses who were at the college as early as Tuesday of that week, that when the significant allusion was made to the privy on the first day, and to the privy-key on the second, that Littlefield, in a natural manner, stands up before the professor, and says, "That is Dr. Webster's private privy. He is the only person who has the key"; and Dr. Webster bows them politely out of the door. And when the key was asked for again, on the second occasion—the Friday of the arrest—Mr. Littlefield said again, "Dr. Webster keeps that key." What, then, does Dr. Webster do, with respect to Littlefield? This man, whose accusation against him is to strip him of name, reputation, perhaps life itself—what does he answer? "He is dumb before the shearer, and opens not his mouth."

When he gets to that dimly-lighted laboratory, standing off nine feet, at the nearest, from the body, he pronounces upon the identity of these remains; and yet, he does not hesitate, behind Mr. Littlefield's back, to charge him with conspiracy against him! But before his face, what does he do? What would an innocent man have done, when face to face with the man whom he says he always hated—although he began to manifest some kindly feelings on the Tuesday before, when he made him the first and only present he ever made, in an intimate intercourse of seven years? When confronted there by him, as an innocent man, he would have said, "Why, Mr. Littlefield, you have had access to my rooms; you can explain

this." But not a word!—not a word! When the two men were together, there was foreshadowed what has since been followed up, and made clear to every eye. Littlefield has spoken out everything;—Dr. Webster has spoken out nothing. Now, through the breath of his counsel, is this witness to be attacked, before a jury and before the world, as not being entitled to credit and belief? No, gentlemen! go down into your hearts, and see what justice you would demand for yourselves, in a case like this; and what you would demand for yourselves, extend to him! I ask no more.

I should have added another thing that was unmistakable in the conduct of Littlefield—the conduct exhibited by him when these remains were found. He and his wife were examined here separately—apart from each other. What a field was thus opened to the defendant for detecting untruth and inconsistency, if any existed! It was impossible for them to have imagined what questions would be asked them; and, if there had been anything untrue in their answers, would not have Mrs. Littlefield crossed her husband's track, in a rigorous cross-examination? And yet there is not a particle of conflict. "When he came up," says Mrs. Littlefield, in simple and truthful phrase, "he bursted out a-crying." The counsel talks about Mr. Littlefield being the janitor of that college, and therefore familiar with subjects of dissection. True, gentlemen; but even he, familiar as he was with them, when that awful truth, which had been but first a vague suspicion, and had kindled its flame in other minds gradually along through that week, till he had been compelled, from his fear of what might happen to the college, to go into that vault,—when that ripened into the certainty that the remains of Dr. Parkman were there—that the founder and patron of the institution had had his mutilated and dishonored body thrown down under its basement—even he could not choose but weep! Was it not a natural expression of feeling, which would thus have been extorted even from a man of flint,—which you see, by his appearance on the stand, that he is not? What opportunity had Littlefield to be in any way concerned in this matter?

Mr. Littlefield was in Dr. Holmes' lecture-room within five minutes, probably, of the time when Dr. Parkman entered that building.

He went to Dr. Holmes' before the close of the lecture. He assisted him in what he had to do, after his lecture was finished. He then came down, with Dr. Holmes, at a quarter past 2 o'clock. Now, we cannot ask Dr. Holmes the question, whether that statement is true, because Littlefield having stated it, and being unimpeached, he could not be corroborated; but they had it in their power to contradict him, if the statement was untrue.

Then, according to Littlefield's testimony, he made his preparations for the fires in the furnaces of the medical lecture-room and the dissecting-room; and also prepared the stove in Dr. Ware's private room; and at 3 o'clock Dr. Bosworth calls there, and finds him engaged in these accustomed occupations, and in his ordinary dress. There we have Littlefield, at five minutes before 2, at a quarter past 2, at 3 o'clock; and then, at 4 o'clock, he was lying down, as we prove by his wife's niece; and Mr. Pettee calls, and testifies that he saw him. And then we find, from half past 5 to 6 o'clock, he dresses himself, and goes to Mr. Grant's dancing academy, and he is there that whole evening. Now, where is Dr. Webster?

Then there is another consideration, with which I shall leave this matter. If Mr. Littlefield had anything to do with that body, he had access to that receptacle of the bones from the dissecting-room, and could command an entrance to it; his throwing anything down in it would have excited nobody's suspicions who might be passing through the entry; he understood that lock, and if he had those remains there for any other purpose than for the gross and incredible purpose I have already discussed,—of fastening suspicion upon Dr. Webster,—he could have deposited them in the dissecting-vault, beyond all doubt.

The question is asked, why did not Dr. Webster deposit them in the dissecting-vault? Two satisfactory reasons! You know whether he had access to it. I very much doubt whether

he knew where the key was kept, or could have unlocked it, if he did. When you visited the building, gentlemen, you tried that lock, and ascertained for yourselves how difficult it was to unlock it. The other reason is, that he was exposed, while there, at any moment, to observation, from the students, who were passing, day and night, to that dissecting-room.

But all these possible alternatives of what he might have done suggest another consideration; and it covers a large portion of the counsel's argument, about the folly of the prisoner, if he was really guilty. When you are tracing the history of a criminal—when you are attempting to mark out the course, which he has pursued—you must remember, that, in judging of his course, and in weighing his conduct, in your anxiety and your conscientiousness of purpose, to arrive at the truth, your own honest hearts can furnish you with no common standard. What he would do, you cannot easily conceive. We always hear of the folly of a criminal. It is very rare that a great crime is committed without prompting such remarks as, "that he would not be fool enough to have acted so unwisely, so indiscreetly." It is not in the order of Divine Providence, that a man engaged in a criminal enterprise shall retain the possession of those faculties which were given him to be used in the work and the ways of virtue. And the course he takes may be, to the intelligence of the merest child, the extremest folly, when, in his own mind, it is the height of adroitness and art. Crime is foolish; it has always been so, from the beginning; it always will be so, until the end. It is as true now as it ever was, that "guilt bedarkens and confounds the mind of man,"—that "human will, of God abandoned, in its web of snares strangles its own intent."

One further suggestion, arising out of the proof in this case, may impress your minds, as it has my own. If a man has an object which he wishes to get rid of, the possession of which is fatal to him, or, rather, the world's knowledge of the possession of which would be fatal to him, what is the most obvious thing that occurs to him, as the instrument and agency

of destruction? Fire! fire!—for that reduces the organized structure to a mass of undistinguishable ashes.

Mr. Foreman, suppose, to-day, a person should intrust to your keeping the simplest thing, with an injunction upon you, that your possession of it must not be known to any human being; that the discovery of it in your possession would be ruinous and fatal, involving your reputation, your liberty, your life. Now, put it to yourself, in what manner you would endeavor to dispose of it, so that all trace of your connection with it might be beyond the reach of human discovery. You might have an opportunity to bury it. Still, the fear would arise that some person might exhume it. It would burn. You must get rid of it. "And yet," you say, "if I leave any trace of it, I am not certain—I am not safe. Its relics may come up at some future time to confront me. If I throw it into the sea, that sea may give it up again; and it may be traced to me. But if I can destroy it by fire, I shall be secure."

It is not the possession of the thing, but the terrible consequences that will follow from the world's knowledge of that possession, that renders its destruction so difficult and perplexing to him upon whom those consequences will be visited. A narrow line, marked out upon a level floor, may be confidently traversed by a child, without an inclination to either side. But broaden that pathway ten-fold, and let it stretch across a chasm, and the man of the firmest nerves, and the most practiced self-command, would no more dare to cross it than he would to

——— "O'erwalk a current roaring loud,
On the unsteadfast footing of a spear."

And so with this learned professor! For in that his intellectual self-discipline makes him no exception to the common lot. When he had that body to dispose of, he had two things to do. And we come now to a consideration of what he did, to show his connection with the murder of Dr. George Parkman. He had, I say, two things to do: one, to destroy the body, and all things pertaining to Dr. Parkman, whether of his remains or his effects; and, at the same time, he was to

avoid suspicion. He was to keep up his natural and customary deportment. He was not to seem to be embarrassed anywhere—he was not to be caught anywhere, or at any moment, off his guard. If a person spoke to him in relation to Dr. Parkman, he was to be in a condition to meet the subject with calmness and self-possession. He was to maintain that external demeanor which would enable him to go to Professor Treadwell's, and sit down and converse upon indifferent topics. He was to make it appear that he was at Cambridge at times inconsistent with the destruction of that body.

But, it may be said, that, although this was his obvious course of conduct, if he could so command and control himself, yet, that it was not within the compass of his, or of any man's power, to accomplish it. Gentlemen, you have seen him here, through these two past weeks; you have seen what his deportment has been, during all the solemnity and impressiveness that have marked the progress of this trial; you have seen him, when others were affected to tears,—when the Judges upon the bench, the counsel at the bar, the witness upon the stand, the entire audience throughout this hall, were unable altogether to repress their emotion; you have seen him when his own daughters were upon the stand, and even the hardened heart of a public prosecutor was too much moved to subject them to a cross-examination; through all these scenes, is not he a psychological phenomenon, who, like this prisoner, innocent or guilty, could remain unmoved? Never has he blanched but once,—never, but when detection, exposure, discovery, yawned before him. Then, he drooped and fell prostrate, as innocence never did. That prostration continued through all the horrors of that night of his arrest, and the day that followed it. And when reassured, by the visits of his legal friend and adviser, he rose again to the great conflict, and was calm; calm everywhere, at all times, under all circumstances; so long as he had anything to resist, to fight against, this power has been at his command;—it has failed him only when fear—the fear of exposure, detection—like the sense of guilt, crushed all his manhood out of him. “Take

any shape but that," he has been able to say, "and my firm nerves shall never tremble."

*Mr. Franklin Dexter*¹ (who was sitting near the prisoner's counsel). Is there any evidence that I interfered in this matter?

Mr. Clifford. There is evidence, sir, that you was sent for to visit him at the jail.

Mr. Dexter. I should like to know who testified to it.

Mr. Clifford. Gentlemen, I shall have occasion to advert to this again. I am here to discharge my duty with fairness and justice to everybody, but with fearlessness also, whatever may be the impressions of those around me. I have mentioned no man's name, and alluded to no man's presence, who does not appear in this cause.

I now come to state the evidence which attaches to the prisoner, and shows him to have been connected with the murder of Dr. George Parkman. We have waited for an explanation of this evidence, and we have waited in vain. Undoubtedly we repel, as by an instinct, the presumption that such a man as Dr. Webster could commit such a deed. I was not unimpressed with the comments which the counsel made in view of such a proposition.

His former fair reputation, as shown by the evidence, is admitted. The fact that he held a professorship in Harvard College is evidence enough of this. And it is honorable to us, that we do hold education in such respect, that, when an educated man, and a man holding a high social position, is charged with a crime, our people—not the educated alone, but the humble, the illiterate—repel at once the probability of its truth.

But, gentlemen, we deceive ourselves. The annals of crime forbid us to indulge this pleasant delusion. We have been too much accustomed to regard it as native only to the low levels of social life,—as skulking out from its dark hiding-

¹ DEXTER, FRANKLIN. (1793-1857.) Born Charlestown, Mass. Member Massachusetts House and Senate for many years. United States District Attorney, 1841-1845, 1849-1854.

places of squalor, ignorance, and depravity, to inflict its deadly blows upon society. But the history of great crimes of violence shows us that neither intellectual culture, high social position, nor even the refining influences of cultivated domestic life, can prove a shield against strong temptation, acting upon a frivolous and neutral character—upon a character that has not its anchorage deep and firm in steadfast religious principle. There is a class of character, thank God! and we have instances around us now, which, of itself, would be almost sufficient to countervail any amount of circumstantial proof that those who bear it had been seduced into crime. But the proof in this case, which shows the connection of the prisoner with Dr. Parkman, forbids us to class him in that category of men of unapproachable virtue. It prompts rather the sad suggestion—"See what a goodly outside falsehood hath"—when we see the best and purest men among us take the stand to testify to his former reputation.

This case must go far to correct the popular notions on this subject. It must impress us with the great truth, that out of the heart of man, not out of his head, are the issues of life, and all those restraining influences which keep him in the way of virtue. If the influences which come from within are wanting, no matter what his degree of intellectual culture, no matter what the graces and accomplishments of which he is master, no matter what may be his reputation among those who can see only the outside of the man,—when the great trial of temptation comes—the temptation, it may be, to keep from exposure and ruin that very reputation, a fair though a false one—he knows not, no one can know, what "he may be left to do."

The work of spiritual dilapidation may have been going on within him, unobserved by the world's eye; and the first indication that the fair outside fabric of his character is not free from crack or blemish, is in its sudden, utter, and irretrievable fall! There never was a maxim so much perverted in its application as that which has been cited and dwelt upon by the counsel, both in the opening and the close, that "No man becomes suddenly vile." This may be true; but it does not

follow, that the first overt act of guilty is the first step from virtue. It is the first, perhaps, that the world sees; and yet the world's judgment may have been long an erroneous one.

Between such a man as I have described, and the poor outcast, with whose face the prisoner's dock is associated, there are two modes in which the world arrives at its decision, and pronounces its judgment. We tried, the other day, in a neighboring county, a man born and bred among us, under the influence of our institutions all his life, for the murder of his wife and two sleeping children. For one in his condition, insanity was the ready and obvious defense,—while, if he had been an educated, gently nurtured, simulating sinner, the cant of the day would as obviously suggested the other answer, that the moral evidence outweighs the circumstantial proof—such a crime could not have been committed by such a man!

No, gentlemen! wherever, and in whatever outward circumstances, you find the heart of man, with all its deceitful passions, and, in the strong language of Holy Writ, “its desperate wickedness,” there you will find the liableness to and the potentiality of crime.

And it is fortunate for society, that it is upon no fine theories, which it may be pleasant but fatal to us to cherish, but upon the legal proof presented to them, that the duties of jurors are to be discharged.

You are to try this prisoner upon this proof; and from that, you are to say, as reasonable men, whether this charge against him has not been made out by the government.

Before going to that proof, it may be proper for me, as a set-off to some of the cases cited by my friend on the other side, in his opening, to present a few historical cases of an opposite character. I have before me a list of them, from which I will select two or three, the study of which leads to the precise result to which my recent remarks have tended, and which are an answer to those cases and those considerations which were presented to you by the counsel on the other side.

It is now just about one hundred years since, in our mother

country, an accomplished scholar, a lecturer and teacher, was arraigned before the highest judicial tribunal of that realm, to answer to the charge of having murdered, twelve years before, another man, for money. And the evidence that that man was dead was the discovery of his bones in a cave, where they had been deposited by the murderer. During that interval of twelve years, that murderer, with the red stains of blood upon his hands, had wielded the pen of a scholar; had corresponded with the most learned men; was engaged, at the time of his arrest, in the preparation of a most learned dictionary, which embraced a knowledge of other languages besides his own. That accomplished scholar, Eugene Aram, who has been the subject of a celebrated work of fiction, of a history stranger than any fiction, was tried, convicted and executed, for that murder, committed twelve years before. So with a reverend prelate of the Church of England, Dr. Dodd, who was executed, during the last century, for a crime, which the whole civilized world held up its hands with horror, to find perpetrated by a man like him. And yet, he confessed it all.

But we need not cross the ocean or the century to obtain such instances. Take the case of Colt,² in New York, for the murder of Adams. There was an indebtedness, and the victim was beguiled, by an appointment, into the place of business of his murderer, and slain for a paltry debt. The case in New Jersey of Robinson,³ who killed Mr. Snyder in his own cellar, and, by a strange concurrence of circumstances, was detected, was tried and convicted, then confessed, and was executed, is another instance. Take the case of another educated man, Dr. Coolidge,⁴ of Maine. What was there to have prompted him to crime, any more than the unhappy prisoner here? No, gentlemen! it is not in any considerations derived from the cases cited by the defense that you are to look for the exculpa-

² 1 Am. St. Tr. 455.

³ 5 Am. St. Tr.

⁴ 3 Am. St. Tr. 732.

tion of this prisoner, or to have the weight of this evidence impaired in the least degree.

Reputation is one thing, character is another. A man who could do what is proved by the most incontestable evidence the prisoner has done, cannot come here, and stand before a jury, and put himself upon his character, and nothing else, without asking them first to obliterate all moral discriminations, and to surrender to a prejudice the real convictions that the facts must force upon their minds.

Now, gentlemen, let us come to the consideration of the facts which go to show that Dr. Webster was concerned in the death of Dr. Parkman. I think I have shown hitherto that Dr. Parkman never left that building after he went into that college; that all the evidence of his having been seen that afternoon is really of no account; that he could not have been slain by any other person; that it could not have been done, especially by Mr. Littlefield. And now, we come to the consideration of this great question—Was he slain by the prisoner at the bar?

First, let us consider the relation which Dr. Webster bore to Dr. Parkman. I do not know that I care to have a better description of that than was given to you by my learned friend who closed this defense. He expressed it in connection with the proposition, that, if he did commit the act, it was manslaughter, and not murder. He represented him, and I adopt the description so far as it shows Dr. Webster the debtor whom his creditor believed had done him a fraudulent wrong, and that Dr. Parkman was acting upon that belief, in pressing for the payment of his debt. And I think it is true, that, when you take into account the fact that Dr. Webster had promised Dr. Parkman, from month to month, and from week to week, and from day to day, up to the time of that fatal Friday, that he should have his money from the proceeds of the sale of his lecture-tickets; then, when he knew that all the proceeds of those tickets were appropriated to other objects—that he could not pay him from them; when you see, also, that Dr. Parkman held a mortgage on his household furniture; when you see

that he had threatened him with exposure;—for it appears, from a communication made to Dr. Parkman by Robert G. Shaw, that, on the 9th of November, two days after the lectures commenced, Dr. Parkman calls upon him; that on the 12th and 14th he calls on Mr. Pettee; that on Monday, the 19th, he calls on Dr. Webster again—which is an important fact ignored by Dr. Webster; that afterwards Dr. Webster sent a note to him, which the counsel regretted could not be here;—I join in that regret; every possible search has been made for it; he doubtless had it in his pocket when he was murdered;—when that is followed up by a visit to Cambridge on Thursday; and the toll-gatherer tells you that he came down to the bridge, about that period, more than once, inquiring for Dr. Webster; when we consider all this, we have a pretty clear undersanding of the relations between these parties.

Dr. Parkman is following him up continually. For what? Dr. Webster has no money to meet him. What is his condition? Here is this creditor, inexorable, as he calls him, and as his counsel echoes—inflexible, I think, would have been more just. The cloud over him is broadening and blackening day by day. What can he do? What is he exposed to? The disclosure to the world of his false but fair character! The exposure of his fraud! But more, and that which comes nearest home to the bosom of such a man—for I grant you he has strong domestic affections, and warm attachments—that which comes nearest home to the bosom of such a man is, that all his effects were liable to be seized, at any moment, and his home stripped of that which stood as security for his debts. His household furniture was all that was left. The minerals, as you will see, when you examine the mortgage, were already disposed of, and money raised on them to pay his debts. That had all been exhausted. You will see, by the papers we put in, that his friends' benevolence and beneficence had been exhausted, and he had no resources left. He was left stripped and bare, to receive the shock, coming upon him from this creditor, whose just indignation he had reason to dread.

What was involved in this impending blow, which he thus feared was about to be struck home upon him? The loss of caste! The loss of reputation! For he could not stand an hour, with that reputation assailed and exposed.

Now, gentlemen, when you come to motive, I undertake to say, that no poor, illiterate outcast, from the dregs of social life, who prowls out from his hiding-place to steal the bread for himself, starving, or for his starving wife and children, ever had a motive which addressed itself with more force to him, than was thus addressed to this prisoner by circumstances like these, to get rid, in some way, in any way, of this tremendous cloud that was darkening all around him, and deepening every hour. Certainly he was the last man with whom Dr. Parkman is shown to have been in contact. Dr. Parkman is found dead on his premises, and under his lock and key; and he gives no explanation. His property is found in his possession; and he gives a false account of how he came by it. His body is mutilated, under such circumstances as I have shown you could not exist without the prisoner's knowledge. His own movements, acts, declarations, and the unconscious disclosures which his fear of detection wrung from him, are evidences of his guilt.

Now, gentlemen, what were his financial relations to Dr. Parkman? Here is a most instructive chapter. Dr. Parkman had held two mortgages:—one to secure the \$400 note, which was given in 1842; and another, which secured that note, and another note for \$2432, which was given in 1847. The mortgage that was given in 1847 covered all his household furniture, all his books, minerals, and other objects of Natural History. That cabinet had been disposed of, so that all was left to secure his mortgage was the household furniture, and what books he may have had. That \$2432 included the \$400 note.

In 1842, Dr. Parkman had made a loan to Dr. Webster of \$400, and had taken a mortgage. He took his note for \$400. In 1847, a loan is made to Webster, of which Dr. Parkman contributes \$500. The whole amount of that loan is \$1600. In

addition to that, there is a balance of \$332, which is included as an indebtedness to Dr. Parkman: \$500 contributed, and \$332 which is till due on the \$400 note. Dr. Parkman takes the mortgage for himself, and for all the other contributors, in his own name. Dr. Webster, in the meantime, according to the statement found in his possession, made by his friend, Mr. Cunningham, had paid all Dr. Parkman's portion of that loan, except \$125, which the doctor, as a mere act of kindness, had given up.

Now, on April 25th, 1849, the actual indebtedness from Dr. Webster to Dr. Parkman was \$456.27. That was made up of three items. The old balance of \$348.33, upon that \$400 note; \$125 of the new loan, and from these is to be deducted \$17.56, which Mr. Cunningham says Dr. Webster has a receipt for. Those, you will see, are the items which make up \$456.27; and they are all due at different times. All Dr. Parkman's interest in that \$2432 note is included in the \$456.27. Then Mr. Cunningham tells him.

'You owe Dr. Parkman.....	\$456.27
Mr. Prescott.	312.50
Mrs. Prescott.	125.00
Mr. Nye.	50.00
Mr. Cunningham ...	25.00
	<hr/>
	\$968.77."

Now, do you think that Dr. Parkman, with his habits of business, intended to go to Cambridge and cancel that mortgage? You will remember that I invited the counsel to explain this. But they stopped their evidence at this point, and so it stands upon the papers. Now, Dr. Parkman never intended to carry that mortgage to the Medical College, with any such purpose. Other parties had an interest here. He says, on this very note, that the other mortgage of the \$400 note is to be cancelled, when he receives \$832 on the large note. He had received \$375 before Mr. Cunningham made his

examination. Then there was a balance due him, as we have shown, of \$456.27.

CHIEF JUSTICE SHAW. What was the date of the note of 1847?

Mr. Clifford. It reads as follows:

“January 22, 1847.

Value received, I promise to pay to George Parkman, or order, twenty-four hundred and thirty-two dollars, within four years from date, with interest yearly; a quarter of said capital sum being to be paid yearly.

JOHN W. WEBSTER.

You see that this note is at four years. That reminds me of another thing:—it was not due. “Value received, I promise to pay to George Parkman, or order, twenty-four hundred and thirty-two dollars, within four years.” But a quarter of it only was to be paid yearly. If he did expect to get his pay, what would he have done? Would he have given up that note to him, leaving his friends to seek their remedies as they could? Dr. Webster had his statement from Mr. Cunningham in April, 1849. It was a sum without interest. Having obtained these notes from Dr. Parkman—having got these notes into his possession—he is to make up his story; and, in order to do that, he must fix upon the sum he had paid to Dr. Parkman. He did not owe Dr. Parkman \$483.64, on the 23d of November. We prove that by his own documents; we prove it by the papers found in his own wallet. He sets down to frame his story;—and there is the most extraordinary document ever found in the pocket of an honest man. You will remember the interviews he had with Dr. Parkman. On the 9th of November, Dr. Parkman calls on him. On Monday, the 19th, he calls again, and leaves him with that declaration, “To-morrow something must be done!” The next day, he writes the note. You will find that the Monday night of the interview is entirely ignored. Nothing is said about the doctor’s going over to Cambridge to see him; nothing between

the 9th and the fatal 23d. What is the story he prepares? He tells it twice on the same piece of paper. What is the object of that? Is a man keeping a journal on such a piece of paper as that? If he were, it is important. If he is writing an account in consequence of the disappearance of Dr. Parkman, why, he had already communicated it to Dr. Francis Parkman, to Mr. Blake, and others! But, gentlemen, there is intrinsic evidence that here, on the 23d, he did not owe Dr. Parkman \$483.64. That was not the sum he owed him. He is to set down and fix that sum. Here is his paper:

“Nov. 9th, rec'd.....\$510
For Dr. Bigelow..... 234

Pettee, cash\$276

Dr. Parkman came to the lecture room—took the front left hand seat.” Of what importance was that? “Suddenly stopped, came to me, and asked for money. Desired him to wait till Friday, November 23d,”—thus, you see, stepping over entirely the evening of the 19th,—“as all the tickets were not paid for, but no doubt would be then. A good deal excited! Went away! Friday, 23d, called at his house about 9; told him, if he would call soon after 1, he should have the money. He called soon after 1, and I paid him.” Now, there is added to that, at a different time, with different colored ink, “\$483.64.” There is added, “Said I owed him \$483.64.” This would imply that he had fixed upon his story. Here are his own figures; and yet he states that Dr. Parkman says he owed him, on the 9th, \$483.64. Then he says, on the 23d, after a half month’s interest, that he paid him just that sum. Do you think, if Dr. Parkman was standing on points like these with this man—that if he owed him that amount on the 9th, he would not have insisted on the one or two dollars interest which would have accrued on the 23d? Do you think he would say nothing about the continuing of the interest to the 23d?

Then, on the paper which Dr. Webster wrote afterwards, I

think you can see, between his writing these two pages, that he had fixed this amount in this way:

“\$456.27 due April 25th, 1849.

27.37 interest.

\$483.64.

Now, if you will reckon, you will see that that is six per cent, which would carry it over to April 25th, 1850. Do you think that Dr. Webster would have paid a year's interest, when only seven or eight months' was due? But perhaps you will say that he did not do it, and that this amount is made up from other items—from the \$125 and the \$17.56, to which I have already alluded, which was a receipt of money which Dr. Webster had paid Dr. Parkman. But he evidently did do it by casting this year's interest, as we show by his own figures. Now, to say that you are to cast six per cent on all the above items is palpably wrong, because he had different times for which to compute the interest on the several items. The computation is made of the six per cent on \$456.27, and it brought him \$483.64.

Now he says, “9th, due Dr. Parkman \$483.64, by his account. Desired him to wait till Friday, 23d. Friday, one and a half, paid. He to clear mortgage,” and the other matters, which are not material. You will have the paper with you, and you will see for yourselves.

Here is another piece of paper. Here is found in his wallet a little piece of paper bearing the figures \$483.64, and another little piece which had reference to something else—“Jug—keys—tin box—solder!” I do not care to go into that. Why is this memorandum of \$483.64 put into his pocket and carried about? It is evident that it is all a falsehood. But it is a fiction which concerns his reputation—which concerns everything near to him—that he should be consistent in; and it would not do for him to change it. Having committed himself to Parkman and Blake, he must adhere to his statement to them. Lest he should omit, by some slip of the tongue, giving

the right amount, he carefully puts down \$483.64, and puts it into his wallet; and carries this, a double version of the affair, omitting two interviews, making a rate of interest which did not exist! And then, gentlemen, what is more important than all, there is found, in the way in which you have already been apprized, through the letter written to his daughter, "Tell mamma not to open a little bundle which I gave her the other day, but to keep it,"—a bundle that turns out to be these two notes. And yet, from beginning to end, he represents Dr. Parkman as taking that money from him, turning suddenly around, and dashing his pen through the signature. He says not a word about two notes, expressly confining his statement to one piece of paper. And yet, here are found in his possession two notes, bearing those marks, which, if made by Dr. Parkman, must have required those dashes to have been made, as it is proved neither one of them was made by a pen. That is placed beyond question, by the uncontradicted testimony of both the experts,—Mr. Gould and Mr. Smith. We can show you how it might have been done. You will have an opportunity to see how it might have been done, by a peculiar instrument found on his premises. But, at all events, he has falsified; and it is not the most serious thing about which he has falsified.

I hope, gentlemen of the jury, I shall very soon relieve you and myself from the examination of this painful case. I am aware I have already occupied more of your time than I expected I should have occasion to, and I thank you for your patient attention. But there is a duty resting on me which I cannot evade. I proceed now to consider, in connection with the remarks I have already submitted to you this morning, the proposition that Dr. Webster has falsified, notwithstanding all his declarations; and you will judge how consistent those declarations are, when you come to consider the statements he made to James H. Blake, to Mr. Littlefield, and to Dr. Parkman, on Sunday, in connection with the statement to Mr. Thompson, his own witness. This last-named witness, under his own hand, has testified that Dr. Webster told him there

were two persons present when he paid the money; and he now states that he thinks he was told there were two persons present, though he is not quite certain that this was the statement—but that there were two persons, one of whom was the janitor, who had just left. Now, either of these statements was untrue.

Then the statement he made to Mr. S. P. Blake, about his intrusting the mortgage to Dr. Parkman, to carry it over to Cambridge to cancel it, is untrue. Dr. Parkman would never have attempted to cancel that mortgage, involving as it did the interests of other parties. Then, take all the circumstances under which he states that Dr. Parkman received that money, and went out from that building with the bills in his hands;—I put it to you to say whether that representation was true.

I now come to a more serious matter still. I say to you, that, from the evidence in this case, he told the toll-gatherer that he had paid Dr. Parkman, when he had not paid him. I say to you, from the evidence here, and from the absence of evidence, that he never paid that money at all. Take the deposits in the Charles River Bank, and the manner in which they were drawn out, and compare them, at your leisure, with the account which Mr. Pettie rendered here, as the collecting agent of Dr. Webster, of the times he paid him money.

It now appears that the whole number of students was 107. Mr. Pettie has accounted for 99. Mr. Littlefield for two. Where could he have obtained the money to pay this? Not from the sale of the tickets, the proceeds of which he had—in his embarrassed circumstances, arising out of an improvident mode of living, which, of itself, is dishonesty—devoted to other objects. A man who lives beyond his means, knowingly, and trusts to the chances of making others the sufferers, is a dishonest man.

Take these representations, and take the evidence before you, and then ask from what source he derived that money, and you have the great, overshadowing falsehood, which goes to the root of this whole case. This prisoner, and his counsel,

have never been unmindful of the great importance of showing where he got the money to pay that \$483.64 to Dr. Parkman.

Let me say, that for four months he has held at his command the entire treasury of this commonwealth, to summon here every witness from whom he had received a dollar. You will observe the Coroner's inquest was held immediately after this terrible event. You will observe that the moment the results of that inquest were placed in my hands, they were passed to him, before I had read them myself; and he has had them from that hour to this. I am willing to take a still more recent period—the finding of the indictment, in January, 1850. I am willing to take that as the time from whence they saw the importance of ascertaining where the money came from; but not a syllable of explanation is vouchsafed to us. And why? Because he had no money to come from any quarter—least of all, from that which he declared to the toll-gatherer it did come from—the sale of tickets.

The law of this commonwealth places its entire treasury at their command. Every dollar expended for witnesses, or for the officers who summon them, is paid by the commonwealth, as well for the prisoner as the government. He has lacked nothing in the vigilance and acuteness of counsel, in knowing all the points made against him, or in furnishing the means that could explain them.

Every student that attended his lectures might have been summoned. Every one who has paid to Mr. Pettee, or anybody else, could have come upon that stand, and shown us, to a mathematical demonstration, how much he has paid, and to whom. Gentlemen, not a dollar is shown!

By the comparison of these two accounts—of the deposits in the Charles River Bank, and of the payments made to Mr. Pettee—you find a perfect coincidence, with a single exception. On the 14th of November, Mr. Pettee paid him \$195, and on the next day he deposited \$150. And now the suggestion is, that he took out a \$100 bill, of the New England Bank, and substituted other smaller bills for it; that he took out the

\$45; and that he was gradually hoarding up the sums to pay this note. This is too transparent a fallacy to put to the intelligence of the jury.

We come to the unhappy conviction, that, if there is anything proved here, it is that Dr. Webster had no money to pay to Dr. Parkman; that he was compelled to prepare his statement and his story, and he did it in the manner I have stated to you.

Then, that interview with Mr. Pettee. What does it indicate? Why, gentlemen, it was an accidental interview. Mr. Pettee states to you that he communicated no message. He calls there at 9 o'clock on that fatal morning; and what does Dr. Webster try to impress upon his mind? Why, he tells him that audacious falsehood, that Dr. Parkman was a peculiar man—subject to the aberration of mind—that he had placed his business out of his hands, and put it into the hands of Mr. Blake. "But," he said, "you will have no more trouble with Dr. Parkman. I have settled with him." That was after he had made an appointment with him to go into the Medical College, where, separate and surrounded and walled in from all the rest of the building, his own apartments were, as Dr. Holmes testifies. And is there not a strange inconsistency in the story that he went to Dr. Parkman's to have a settlement with him? Why not have paid him there? Is there a particle of evidence that he was in a better condition to pay his at half past 1 than at 9 o'clock? Did not Dr. Parkman do business at his own house? If he had the money, he would have said, "Thank God, I will get rid of this creditor now!" What evidence is there that he received this money between 9 o'clock and half past 1 o'clock? Whoever there was who paid him in that brief interval, they have had the resources of this government to bring here upon that stand and enlighten you; and, believe me, nothing which they could do has been left undone.

If he did not pay Dr. Parkman,—and that he did not, is apparent from all these facts, and perhaps as strongly from this fact as all others, that Dr. Parkman never would

have given up that note or cancelled that mortgage, which involved the interest of other parties—never in the world!—if he did not pay the money—if he did not have the money to pay with—then how did he get those notes? You will find a little memorandum on one of them, that it was paid November 22, 1849. Was that the first thought, corrected afterwards by an after-thought, that Dr. Parkman might have shown these notes to Mr. Kingsley, or Mr. Shaw, or somebody, on Friday morning; and therefore that it would be fatal to him to have it understood that he paid him then? Was it prompted, in the first instance, by the fact that at 9 o'clock he had told Mr. Pettee "he had settled with him"? Dr. Webster did write, in his own handwriting, "\$483.64 balance paid November 22, 1849."

Then, gentlemen, the whole thing is changed. The story was prepared, as I have already told you—evidenced by the documents found in his possession—evidenced by the documents which he attempted to conceal. You remember he impressed upon his wife, to keep the bundle, and not to open it. I ask again, if he did not pay those notes, how came those notes in his possession? What becomes of all these contradictory and inconsistent theories, that Dr. Parkman was murdered by somebody else, or elsewhere? I put it to your intelligence:—answer that.

Now, gentlemen, I shall briefly consider the evidence which goes to confirm all this.

I am reminded, gentlemen—and it is a fact that I should not forget, for it is pregnant with importance—that on that Friday morning Dr. Webster did receive from Mr. Pettee a check for \$90 of the proceeds of the tickets—the source from which he said he would pay Dr. Parkman, and from which he afterwards said he had paid Dr. Parkman. And yet we find, from the books of the bank, that this identical check for \$90 was deposited by him, on the next day, in the Charles River Bank. I leave here all this matter of finance, with this exposition of the significant truth thus developed by their financial relations.

What was the condition of things in that laboratory when those remains were found? I shall go less fully into this than if I had not consumed so much time, so much more than I expected, upon the earlier topics of the case. There are some things which I should do great injustice to this case to overlook. In the privy vault, with the remains, there were found certain towels, which were produced here. I especially call your attention to the fact, that some of these smaller towels were marked "W." One of them, it is here clearly in proof before you, was in that laboratory, and in his upper room, on the very morning of that Friday when this fatal interview with Dr. Parkman took place.

Then, gentlemen, that knife, found in the tea-chest! Why, the counsel for the defense overlooked, in their comments upon this, the important fact, which they themselves had put into this case, by the cross-examination of one of the government witnesses, that, on the 17th of November, that knife was over at Cambridge, and afterwards, between the 17th and 23d, was brought over to the Medical College. Now it is said that that is evidence of design to fasten suspicion upon Dr. Webster, in connection with the remains; and that the minerals, which were not entirely covering the tan, on Tuesday, when Kingsley saw the fire and tea-chest, were not put there by Dr. Webster. The very fact, of that search, that Mr. Kingsley's attention was called to that—would it not prompt him to have piled on more minerals, and was not that done, evidently? And the knife was found there. It had been in his possession. And who, pray tell me, if I have not utterly failed in making myself understood, who could have done this but Dr. Webster himself? And, gentlemen, it may very well be said, that if that hammer, the disappearance of which is one of the marked facts in this case, has been got rid of, he might also have been equally anxious to be rid of the knife.

The yataghan was there—a murderous-looking instrument—recently cleaned, as Dr. Jackson testified. As you will see, it is enough for me to say that here were murderous instruments connected with him, and with no other human being.

Why, too, did he have that tan sent over here in that suspicious way? Why not let Mr. Sawin have admission to his laboratory, as he had done two hundred times a year before, as he swears to you? Whether it was to be used for the tea-chest, or the tin chest, neither you nor I can tell. It is an antiputrescent, and would stifle odor. And what is most significant, although Mr. Sawin brought over for him two empty boxes, the fagots, and the bag of tan, the bag of tan was taken into the laboratory by Dr. Webster, and the others left outside! If anybody else had done this, after his direction to Sawin to leave them all outside the door, would not Dr. Webster's eye have discovered it? There was charcoal, and anthracite coal, and pitch-pine kindlings, which disappeared in considerable quantities, during that week. The process was slow; and I will tell you why it was slow. He had those clothes to get rid of. The minutest circumstances are sometimes most important. The report of the physicians shows that there was among the remains a shirt-button; and if he separated the body from the clothes, remember that he had the clothes to get rid of as well as the flesh, thus accounting for the time expended. Then the blood upon the pantaloons and the slippers! These were treated of in a very summary way by the counsel, as being of no consequence. I submit whether they are, or not. If they were drops of blood falling from above, then I agree that it must have had much less weight than it will have, as the facts are shown by the testimony of Dr. Wyman, that it was probably spattered from beneath.

And then those stains upon the stairs! They were there when Littlefield saw them, tasted, and found them acid. His testimony is abundantly corroborated by Dr. Wyman, who says that they were fresh. Kingsley saw them also. It turns out that they were nitrate of copper; and I defy any man to look upon them, as you have looked at them, and believe that they have not been thrown there by design, spattered, as they were, up against the perpendicular sides of the stairs. If my eyes did not deceive me—and you have had the same opportu-

ity to examine that I have, I submit whether I am not right. It is proved that they were fresh. And they are shown to be among the most efficient agents for removing the characteristic signs of blood. Dr. Wyman tells you water is as good for this purpose as anything. Water was used most freely; the Cochituate was always running. The party had succeeded in removing all other traces. That which confessedly was done would have been more difficult than the removal of the traces of blood, if traces of blood there were. If the mortal wound did produce an external effusion of blood, to the extent that would seem to be implied by the course of argument on the other side—which by no means appears from the testimony, as a man may be stabbed in the region of the heart, and all the effusion, or almost all of it, be within the chest—here were the means of removing blood.

Much was said of the overalls. We did not introduce them. I have no idea that he had on his overalls. I never made a point of it;—so all that requires no answer.

Those skeleton keys! Did he state truly where they came from, or was there a connection between them and this transaction? Was the filing done by himself?—for, remember, they were filed. And is it a probable fact that the keys that would open the dissecting-room were picked up by him in the street, and carelessly thrown into that drawer? We cannot trace the course of such a man's inexplicable conduct, any more than you can trace the course of the serpent upon the rock. But there are signs and indications which will not be lost upon intelligent men.

Then we find that, in his private room, there were grapples, made from fish-hooks, which had been purchased on the previous Tuesday; and when you come to examine them, and take the whole testimony in relation to them, you find that the first grapple was made of three hooks. You will find that they had been used; that oxydation had commenced upon them,—one of them had become quite rusty. Then one was made of two hooks; then one of but one. Then he goes and purchases, on Friday, smaller hooks. All the time flitting between the

college and Cambridge, to keep up his *alibi*!—and then you will determine for yourselves whether importance is to be given to this fact of the fish-hooks.

You find, around the thigh of these remains, a piece of twine, which the counsel have treated in a contemptuous manner, by saying, if there had been a ball of twine, he would have been as likely to have taken that as he would to have been there;—overlooking the fact that that twine was not found down in that laboratory, nor in the upper laboratory; but in the private room of Dr. Webster, to which he alone had access, and in his private drawer. And I ask you whether this does not connect him directly with the remains in the tea-chest?

Then the mode in which that body was cut up! I have adverted to the attempt to destroy it by alkalies. But I come to what is of more importance than any other fact connected with the condition of things in that laboratory. Dr. Webster, gentlemen, carried in his pocket the key of that privy, in the vault of which were found those remains! That is a fact in this case which has not even been alluded to by his counsel. Gentlemen, I ask you to look at that key, when you are alone, and ask yourselves the question, whether a gentleman, a man of culture, would be likely to carry around in his pocket so cumbersome a key as that, which he could, by no possibility, for any honest purpose, use anywhere else? When that key is called for, what is his answer? “It hangs up yonder.” It is not found there; the key of his wardrobe is found. He says, “I do not know, then where it is.” Then that door is broken open; and it turns out, afterwards, that while they were at the jail, and before they had gone to the college, that privy-key, which locked up those remains, had been borne about in the prisoner’s possession, and was taken from his pocket by the person who arrested him.

In the great case of Courvoisier, for the murder of his master, Lord William Russell—that case which has made all Europe ring with strictures upon the conduct of the counsel, whether just or unjust—the great fact insisted upon was, that the bloody gloves were found in the trunk of the prisoner—

put there, as it was contended by his counsel, at a subsequent time, to fasten suspicion upon an innocent man. Here were the remains themselves found, not in the trunk of the prisoner, but found in a place to which he alone had access,—the key of which he kept in his own pocket, and the fact of which possession he denied.

And you will determine whether I have said too much, or said it too strongly, not only that this prisoner stands justly charged with the homicide of Dr. Parkman, but that his mutilated remains have been found under his lock and key.

The matter of the blankets—of new blankets and counterpanes—is inexplicable to me. Why they should have been put there, or carried there, I do not know, and you will judge. I make no suggestion respecting them.

Now, what was his conduct and his whereabouts through that week? In the first place, he was locked into his laboratory, at unusual times, during a week of official leisure. Has he shown, or attempted to show, that he was engaged in anything which required his presence there? That he was so locked in, does not depend on Littlefield's testimony alone. Clapp, Rice, Starkweather, Fuller, Mrs. Littlefield, Mr. Samuel Parkman Blake, Mr. Sawin, who had often gone there before, testify to it.

The Cochituate water was running. No fires were wanted; and yet, it is here in evidence, unimpeached and unimpeachable, that fires were kept up during that week, more intense than were ever kept there before, and in places where no fire was ever kept before.

Gentlemen, when was he there? I have already stated to you, and to the Court, that, upon a critical examination of the testimony of his three daughters, there is a most significant and remarkable corroboration of the testimony of Littlefield. They do not conflict in any particular. He was there on Friday afternoon. What was he doing there? Where did he dine? I have already asked you that question. It is worthy of your consideration. On Saturday morning, you have no trace of him. From Saturday morning at 1 o'clock, until Sunday

in the afternoon at 1 o'clock—have you any assurance where he was during that interval? Is not the argument just and fair, that he had come over, in one of those flittings of his, from Cambridge to the Medical College? Nobody else had a key to the building but himself and Dr. Leigh; and there is no pretence that Dr. Leigh was there. The door was left bolted at night, and was found unbolted in the morning.

In the course of that forenoon, on Saturday, when Littlefield went in to build his fire, and was about to proceed down the laboratory stairs, he received, for the first time in his life, the peremptory order, "Mr. Littlefield, go out the other way." He went out as he came in. On Sunday, he was there. Then he had those interviews of which I have spoken, and upon which I do not care to dwell. In his interview with Mr. James Blake, his story was prepared; and you have been asked, with great significance, "If he were a guilty man, why should he come to communicate that interview; for nobody would have known it, if he had not?" If nobody was to know it, why does he have the notes? How did he know but that they had been exhibited to Dr. Francis Parkman on that very Friday morning? The fact that he communicated his interview is explicable on other grounds also. How could he know but that he would be remembered, on that morning, by the servant? And what a fatal fact, if he kept it to himself, if it should turn out afterwards that he was recognized!

But suppose he had been perfectly sincere, and had wanted simply to communicate with this family the fact of the interview; then I submit to you, considering the relations between him and the Rev. Dr. Parkman, he would not, at least, have slept that night without sending a note to relieve the agony of that family. But he waits till Sunday, and is dissuaded from going in the morning, in order to go to church.

He had an early dinner on Sunday, in order that he might go over and communicate with Rev. Dr. Parkman. But he does not visit him till he had spent some time in the college. He does not get to Dr. Parkman's house till 4 o'clock in the afternoon; and then he makes a communication, the object of

which seems to be, to impress on Dr. Parkman's mind just two things—one, that he had paid money to his brother. He was never to appear. These notes would be traced. He must show that he had paid them. The other, that his brother was in a strange condition, and that he rushed out in a hurry, indicating a disordered mind; and that concluded all that cold, business-like, unsympathizing interview with the family of his own pastor, and the pastor of his children.

Then, on Monday, that striking interview with Mr. Samuel P. Blake, when he braced himself up to answer questions! It is commented upon by the counsel, that he was too warm in his interview with one, and too cool in his interview with the other. But both are consistent with the theory I have suggested.

I come now to another subject. Mr. Blake said he (Dr. Webster) told him enough to make him believe that Dr. Parkman took that mortgage from him, although we find that very mortgage in Dr. Parkman's house. We find an interview with Fuller and Thompson on Sunday night. Mr. Thompson did not observe what Fuller did, and Fuller did not hear what Thompson did. They are to be taken together. Mr. Fuller witnessed the agitation of Dr. Webster; Mr. Thompson heard, by statement, of his interview with Dr. Parkman.

This is all evidence. And the statements that either two persons were present when he paid the money, or two persons, one of whom was the janitor, had just left, were both fabrications. On Tuesday, he wanted no fires—his lecture would not bear the heat. Is it true that, with the knowledge of this fact, the counsel can turn around and say that the counsel for the government have not shown that it would bear it? Dr. Webster could show, by the students, what his lecture was that day; and then the chemists here could tell whether it was a matter to bear heat or not. This is for him, and not for the government, to show.

Then, Clapp's search! It amounts to nothing, except the leading away from the privy, and opening of another door, through which Dr. Webster led them. Mr. Kingsley saw a

fire in the assay furnace on that Tuesday. That fire was burning, and Dr. Webster was there, and the tea-chest was there, also,—the tan and the minerals in it—on that day. Then, gentlemen, he gives that turkey to Mr. Littlefield! If there was an attempt at conciliation, it was not an attempt of Littlefield's, but of Dr. Webster, so far as it amounted to anything. And it is consistent with the fact, that he stated that he had such a horror of this man? If you believe Mr. Littlefield, on Wednesday, Dr. Webster was at that furnace. He was away from home, by the testimony of his own daughters. Fire was burning. He locked up everything fast—covered up this fire in the furnace, and left it to burn and smoulder away.

Then, his other object, that of keeping up the *alibi*, was to be attended to. He was at home at dinner on Tuesday; but he came into town on the afternoon. For what purpose? So far as it appears, to give Mr. Littlefield this turkey! Nothing else!

On Thursday, Thanksgiving day, he was at home after 11 o'clock. On Friday, in the morning, at 8 o'clock, he was at home. At 9 o'clock, on that morning, he was at Mr. Waterman's shop, ordering the tin box. It is said, by one of his daughters, that they were in the habit of sending plants to Fayal. If that had been the purpose of this box, never needed before, would it have required the strong handle? If, too, plants were to be sent in it, would it have been soldered up tight? Who ever heard of sending across the water live plants in a box so soldered up as to exclude the moisture and the air?

More decisive than this, his daughter tells you that she does not know as there was any intention of sending plants at that time, and Mr. Waterman tells you he never made such a box for him before. But that interview with Mr. Waterman is very significant. "Dr. Parkman," he says, very energetically, "did go to Cambridge"; and then he tells the story about a man's having seen, in a mesmeric state, a cab, the number of which was obtained, in which Dr. Parkman was carried off, and blood was found in it!

I do not know how it strikes your minds; but that a teacher

in Harvard College should be here, in the city of Boston, in the shop of a mechanic, trying to impress upon this man the truth of such a story as that, strikes me as singular. He followed up that day, telling that same story to Mr. Littlefield and his wife. Then, in the course of that day, he buys the fish-hooks, and, in the afternoon, goes over to Mrs. Coleman's, and has that striking interview with her. What was he trying to ascertain from her, or to make her say? Why, that Dr. Parkman was seen by her on Friday! "Are you sure it was not on Friday?" And even after she had given him reasons, and even after he goes to the door, he repeats the question—"Are you sure it was not on Friday?"—trying to impress her with that idea.

Then, that night, on that week, or some one of the nights on that week, without his family, upon the evidence of Mr. Sanderson, the watchman, he went out in the late omnibus, between 11 and 12 o'clock.

I have thus traced him, and shown that he did all that was competent for him to do; that he went to Treadwell's, not by invitation, but a casual call; that he played whist, which is all consistent with his subsequent conduct, and with that which he has shown here. It required nerve. He has it, and enough of it; excepting, and only excepting, when fear fell upon him, and the dread of impending exposure made him afraid.

Gentlemen, I have but a word to say in relation to these anonymous letters. The counsel has called your attention to one single feature, which was spoken of by Mr. Gould as characteristic generally of Dr. Webster's writing. He has called your attention to it in this letter, as being of a different character. That is, the figure 9. Look at that figure 9, and see if it is not evidently disguised.

Then, there are some other circumstances in connection with this. I do not profess to be an expert; but, when I find a respectable man, like Mr. Gould, who has paid fifty years' attention to this matter, and another, Mr. Smith, who has had, perhaps, thirty years' experience, coming upon that stand, and saying to a jury, that they have made a thorough examination,

and that they have no doubt that the handwriting is that of Dr. Webster, I think their testimony is entitled to some respect. If a mechanic should come and tell me, as a lawyer, that such a thing could be, and such a thing could not be, and it was exclusively within the province of his art—if I believed him to be an honest man, I should defer to him. If a ship-master should come upon the stand, and undertake to tell me, as a lawyer, that, under certain states of the wind, and of the ship, such a result would happen, I should believe him, because he has experience, and is competent to instruct me.

And, when a man comes and says, that, having had fifty years' experience in the examination of hand-writing, that he has no doubt, and that is confirmed by the testimony of another witness, who also has no doubt, that it was written by Dr. Webster, then it is entitled to consideration. That letter is written by a man accustomed to composition. It is signed "Civis," the Latin word for "Citizen." It is written by a man who had some knowledge of the Latin tongue. Who would be likely, in a matter so interesting to the public, to have undertaken to communicate with the City Marshal under an anonymous signature? If it were Dr. Webster, and he was innocent, would he not have done it personally, making such suggestions as he considered important? Then, other letters are not testified to so positively, namely, the "Dart" and what I have called the "Sanserit" letter. But you will find that the latter is written on a fine delicate note-paper. It was not written with a pen. That there was an instrument found in Dr. Webster's laboratory, which is fitted to make this, is proved; and that instrument is such an instrument as might have made those erasures upon the notes, which were not made with a pen. But I submit this part of the case to your judgment, without pressing it upon you.

Gentlemen, I do not know but that I have said almost all that is necessary for me to say, with regard to Prof. Webster's conduct, prior to his arrest. I now propose to add a single word, respecting his conduct afterwards. I have spoken of his meeting Mr. Littlefield. He had spoken to Mr. Stark-

weather of Mr. Littlefield, before he met him face to face—but that conversation with Starkweather is too important not to have your attention called to it for a single moment. Here is a man, certainly, of intellectual culture—of a certain degree of self-discipline, such as you would expect to find in an educated man. He is called upon, at his own house, after his own premises have been searched for the missing body of one whose disappearance has excited the entire community. He is waited upon by three police officers. They say they wish to make a further search of his premises. He makes no objections. He calls their attention to the fact, that Mrs. Bent had seen Dr. Parkman. He knew that story. Did it impress his mind that nothing was discovered? Did he suggest this in the hope that, on going to Mrs. Bent with these police officers, she might modify her statement? They stop at the Leverett street jail. Mr. Clapp goes in, and, upon returning, requests them to get out. He, submissively, and without inquiry, follows them into the prison. Who is Dr. Webster?—and who are they? He, a professor of Harvard College! and they, police officers of the city of Boston! He follows them, and not till they reach the inner office of the jail, does he ask what it means. Mr. Clapp replied, not that Dr. Parkman's body was found, but, "Dr. Webster, you remember I called your attention to the soundings which have been made above and below the bridge. We have been sounding about the Medical College; we have been looking for the body of Dr. Parkman. We shall look for it no more; and you are now in custody, charged with the murder of Dr. Parkman. He articulated half a sentence," continued Mr. Clapp—"I could not understand it; and then he said, 'I wish you would send over to my family.' I told him they would better not learn it till morning. He seemed inclined to speak a word or two, and I told him he had better not say anything about it."

What was his conversation, when he was left alone there with Mr. Starkweather? And remember, that, not even in the cross-examination, was it attempted to be shown that this conversation was not reported exactly as it was taken down. The

appeal is then made to you, to consider him as an irresponsible person—that he was in no condition to know what he was about, and that you ought not to regard his declarations any more than you would those of a raving maniac.

He had intelligence and malevolence enough to endeavor, then and there, to make a causeless accusation against an honest, though a humble, man. He did make inquiries, and, from that time, he was master of himself. He says to Mr. Starkweather, "You might tell me something about it." Immediately after Mr. Clapp and Mr. Spurr went out, he asked for water. A pitcher was brought, and he drank several times. "He asked, 'if they had found him.' I told him not to ask any questions, for it was not proper for me to answer them." No man ever had more consideration, from Mr. Parker down to Mr. Starkweather, than Dr. Webster had that night. He was expressly cautioned. He said, "You might tell me something about it—where did they find him? Did they find the whole of the body?" I ask you, if, with the knowledge this prisoner had, that they had been sounding about that Medical College, and should look no more for the body, what prompted that inquiry—"Did they find the whole of the body?"

Mr. Foreman, or either one of you, gentlemen, I ask you to put yourselves in the condition in which Dr. Webster was that night, being an innocent man. A tipstaff has put his hand upon your shoulder, and you are taken into custody: and the body, he says, of a murdered man is no longer to be searched for, because they have been searching enough, and you are arrested as his murderer. Now, what would prompt you to put such a question as that, not knowing that the body was cut up—"Did they find the whole of the body?" There outspoken the guilty conscience, showing a knowledge that the body of Dr. Parkman was not an entirety, but separated into fragments. "I then asked him, if anybody had access to his private rooms but himself." "Nobody, but the porter, who makes the fires!" Next a pause! Then he says, "That villain! I am a ruined man!" He then put his hand into his pocket, and took something—and then he had those violent

spasms, and the other symptoms that followed through that night; and, in the presence of Mr. Cummings, the turnkey, while tossing upon his bed, unconsciously comes out from him that confession, "I expected this!"

Now trace him down to the Medical College. He had had no information that the body had been found. Mr. Clapp told him simply that they should search no more. When he had reached the college, and when they were searching the private room, where they can find nothing, then he is calm. But when they got down to the laboratory, and it was discovered that the remains were found in the privy-vault, then came that spasm again. And, if you believe what the witnesses testify to, the sweat streamed out upon him, though he was complaining of cold—that his pantaloons were saturated, and his coat moistened with perspiration!

I ask you, if this man, who has gone calmly through, innocent or guilty, more than any man I ever knew—whether you can believe that that was the mere prostration of an innocent man, or whether it was the guilty conscience that drew the sweat of that mortal agony out of him? When he found that there was nothing discovered but these remains in the vault, upon which were no marks of identity, and which he did not see nearer than nine feet, he says, "Why did they not ask Littlefield?" "They took me down there, and asked no questions." And he comes here with no declarations, of that fearful night, which had been extorted from him by inquiries. All that comes here is voluntary, unconscious confession of mute nature in the man.

Now, I have but one other fact to comment upon, and I will relieve your patience. On Saturday, he remains in this condition. Mr. Andrews states to you that he went in there in the morning, and then he made that cruel accusation against Littlefield, although he said—not as the counsel put it to you, but in his own language,—“That is no more Dr. Parkman’s body than it is my body; but how in the name of Heaven it came there, I do not know.” This is his defense; and it is

expected that this asseveration, which is no more than his plea of not guilty, is to outweigh the proof!

Gentlemen, was he in that condition when he could have made an inquiry, at any time? Can you conceive of any innocent man, going along through twenty-four hours, nearly—for it was followed up during that day—and being perfectly mute, making no inquiry. The only thing was, to ascertain from Starkweather what he could not tell him with propriety. And from that hour in which the remains were found, not a word escaped him, in regard to the matter. He continued there till the Police Court, on Monday. He says, "I will go to prison; I will let my family suffer the torture of suspense; I will let my name be blighted by the prejudgment of the world; I will not even ask them what their evidence is." Then he returns to that prison, and there he writes the letter containing this sentence:

"Tell mamma not to open the little bundle I gave her the other day, but to keep it just as she received it."

Gentlemen, you have that letter with you. Here is a man of education—here is a man who has lived all his days under the influences of cultivated, social and domestic associations—here is a man, a professor in a Christian university, whose motto is, "Christ and the Church!" He is in the cell of a prison, as he was described by his counsel, and he sits down under this terrible accusation—an accusation that he had been guilty of a crime at which the universal heart of the world revolts! And, gentlemen, he is the victim of a conspiracy, which has fabricated that accusation against him. He sits down to write to his daughter, to ask his wife to conceal that, which, when this note was read, and the officers went there, turned out to be the two notes, and that statement of the indebtedness of himself to Dr. Parkman!

And you will find it underscored, "not to open that bundle." He is writing a letter, for the first time, to his daughter; and I ask you whether he indicates in that such a character as his counsel would claim for him? What is that letter? Not a word in it, that he himself was assured of his innocence, and

telling her to keep up her heart, for it would all be made right ! Not a syllable which could strengthen and assure them—not a word of reliance upon God, in that dark hour—but a paltry enumeration of his physical wants, and so on through—a little pepper ! and a little tea ! Gentlemen, I forbear. I submit to you, that is not a letter from an innocent father, the victim of a foul conspiracy, immediately after his imprisonment, to a distressed and anxious child. I will not comment upon it. You will consider with what justice the claim can be made, and how it indicates character.

Gentlemen, we have been asked here to consider that, if this act was done by Dr. Webster, it must have been in the heat of blood, provoked by contest, and therefore to be considered as manslaughter. When the counsel said, “Would to God that he had rushed out, and said, ‘I have killed my brother man !’ ”—remember what he did. Remember his plans, which repel the presumption that it could have been done in the heat of blood. I have not thought it proper to dwell upon the circumstances which imply premeditation, nor do I do so now. It is entirely immaterial whether he premeditated this one day or one minute. If you are satisfied that he did remove Dr. Parkman from this mortal life, however sudden, if it was done with an instrument likely to cause death, and unprovoked by a blow, then it is just as much murder as if he had premeditated it for months. We find in that the implied malice of the law. I leave it to you to say, whether you do not find the express malice of the law. The treatment of these remains proves incontestably that there was the malice afterwards, if not before ; as described by the great reader of human nature,

“It doth seem too bloody,
First to cut off the head, then hack the limbs ;
Like wrath in death, and malice afterwards.”

I do not know as you could find in the books a better illustration of the implied malice of the law than this cruel conduct indicates.

Have you any doubt, from all this evidence, that Dr. Webster had an agency in the death of Dr. Parkman ? Can you

doubt it for a moment? It is not a possible doubt that will shield you from your responsibilities—it must be a reasonable doubt. And [turning to the bench] I invoke your Honor's instruction to this jury, as to what a reasonable doubt is. It is a doubt for which a man can give a good reason, and not a mere possible doubt that somebody else may have done it. And it is for you to say, upon all this evidence, whether you do entertain that reasonable doubt which is recognized by the law, and which, extended beyond its fair meaning, would leave society at the mercy of the passionate, the lawless, and the depraved.

Gentlemen, you have had appeals to you, in behalf of the prisoner's family, both in the opening of the counsel, and in the closing argument. God forbid that we should forget them, though he did! We will remember them better than he remembered the family of Littlefield, whom he could gratuitously charge with being the author of a homicide, or a conspiracy, which was worse; and more than he thought of the family of Dr. Parkman, when he was endeavoring to impress upon Mr. Pettee, by a gross and audacious falsehood, that Dr. Parkman had been insane,—taking away from them, in their bereavement, the consolation of thinking of him as he was, and as the proof has shown him to have been, on that fatal morning, in good health of body, his mind in its undimmed intelligence, and in unusually cheerful spirits.

There is another family we are not to forget. That wife, whose partner and protector has been suddenly removed from her companionship;—that invalid daughter, on whom his last thoughts were most probably centered, as was indicated by the purchase of that delicacy for her on Friday,—that daughter to whom his kind and paternal presence made up the daily sunshine of her weary hours but to whom, in his assiduous kindness, he will never come again;—and that only son, who was compelled to hear, in a foreign land, the heart-crushing intelligence that he should see his father's face no more; and who comes home to enter upon the large responsibilities which

his father's death devolves upon him, without parental guidance and counsel!

The family of the prisoner are not to be forgotten. Our hearts bleed for them now; but it is one of the great Providential penalties of sin, that the innocent must suffer with and for the guilty. In the official experience which has been common to my learned friend and myself, we have often seen the mother, the sister, heart-broken, appealing for mercy for some sinning, erring son or brother. Gentlemen, it is so everywhere; and no man can transgress the laws of God, without involving others in the suffering that must follow. But is that a reason why we should fail to do our duty, compassionately, it is true, but resolutely and firmly, like men?

It was the remark, gentlemen, of a great English statesman, that "the great object of all good government was to obtain a good jury." If in any government this is true, it is especially so in ours, which is "a government of laws, and not of men." The constitution of this commonwealth, as I have already intimated to you, as its first and highest object, has the protection of life,—the security of human life against the violence of passionate and the machinations of wicked men. And, gentlemen, shall it fail of this, its high purpose?

If you undertake to exercise, here, the prerogative of mercy,—a prerogative which is assigned by that constitution to another tribunal,—how can you tell, gentlemen, what mercy is? I very much doubt, indeed, whether these murders—which have so thickened upon us of late, the investigations of which have crowded, within the last few months, our judicial annals—I very much doubt whether here, in Massachusetts, we should have had to deplore them all, had it not been for the weakness of jurors, who have permitted those proved to be guilty, through a false tenderness of conscience, to go unpunished. Remember that great maxim, which has been long honored in other lands,—"*Judex damnatur cum nocens absolvi-tur*"—the Judge is condemned when the guilty is acquitted. The juror who permits the guilty to escape, convicts himself. If ever we have had a case which requires the jury to stand

up firmly to the discharge of their great duty as citizens, it is here and now. The mercy which is to be exercised by a jury may be more effectually exercised by a conviction, oftentimes, than by an acquittal. How can you tell,—who can tell—how many great crimes might have been spared to humanity, if all our verdicts heretofore had impressed upon the public mind and the public heart the certain conviction, that judicial punishment follows, like its shadow, detected crime!

I do feel, gentlemen, that upon twelve men here is resting a higher responsibility than ever rested on twelve men in Massachusetts before. Remember that we have had here, through these long and weary days, those whose labors will carry this trial, and all this mass of proof, unanswered by any explanations on the part of the defendant, into all lands, to be read in all languages, and to be read, gentlemen, as a memorial of you among all men,—a testimonial of the degree of inflexibility and firmness which you shall have exhibited, in upholding, paramount and supreme, the law under which human life has claimed and enjoyed protection, in this Commonwealth of Massachusetts, since its foundation by the Pilgrims!

THE JUDGE TO THE PRISONER.

CHIEF JUSTICE SHAW. Prisoner at the Bar: Before committing this cause to the jury, if you have anything to say, you may address the jury, making any statement that you think fit, and which you think necessary for your defense. I ought to inform you, also, that this is a privilege granted to you, which you may use or not, at your own discretion.

PROFESSOR WEBSTER'S STATEMENT.

Professor Webster. I feel indebted to your Honor for this kind permission. I cannot go into an explanation of the network of circumstances which has been woven around me, and which, in nine cases out of ten, would require many hours to unravel, though, to probably nine-tenths of them, I could give a satisfactory explanation.

On all the points, testimony had been placed in the hands of the counsel; and my innocence would have been firmly established, if it had been produced. But, acting entirely under their guidance, I have sealed my lips, and, from the first moment, I have trusted entirely to them. They have not seen fit to bring forward the evidence on a great variety of subjects, which, therefore, have been brought to bear, with consummate ingenuity, against me. I trust they will not be considered against me by the jury.

I will allude to one or two of the subjects which have been unexplained. I doubt whether the letter written by me, from the jail to my daughter, and which has been read, was the first, because there were two or three long letters which I wrote about that time. The inference, from the sentence in that letter, which led to the examination of my private papers by the police, was different, very different, from what was intended by me. The explanation of that sentence is as follows: I had read, in one of the daily prints, which were distributed in the prison, some of the various fabrications which were made respecting me; and one of them which I saw was, that I had purchased a quantity of oxalic acid. It immediately occurred to me that the very parcel referred to was saved, and could be produced. For several days, Mrs. Webster had reminded me of a want of citric acid, and laughed at me when I returned home for forgetting to obtain it.

On the very day of my arrest, I stopped at Mr. Thayer's Apothecary establishment, in Bowdoin square, conversed about half an hour, on various topics, and purchased the citric acid. I carried it home, and placed it in my wife's hands, saying, "There is your acid." I knew that the possession of the acid would show that it was not oxalic; and hence the request about the bundle—not to open, but to keep it—had no connection with the papers.

Mr. Charles Cunningham was at my house when the officers came there to examine. They broke open a trunk, examined it, and left. Afterwards, Mr. Cunningham opened that trunk and, in looking over the papers, found the notes lying there;

and thinking they had been overlooked, and that the officers might come again, laid them in sight, and made a memorandum of it, in the presence of a witness.

Then, with regard to Mr. Thompson! I conversed with him on this very point of aberration of mind, and also asked him if Dr. Parkman had in his hand, when he saw him, this very bunch of lettuce; and I think he added, that he had a bundle.

In regard to the nitrate of copper,—either the lecture preceding my arrest, or the one preceding that, I had occasion to show the experiments of changes of color in gases. I prepared a large quantity of the nitric oxyde gas. In a two gallon jar, were placed nitric acid and bits of copper. Nitric oxyde gas is thereby produced. After standing a few hours, it becomes colorless; and, during the lecture, by the admission of oxygen gas, it becomes of a bright orange color, the gas being changed, by this experiment, into nitrous acid. Blood, by the admission of oxygen gas, is changed from dark venous blood to florid red. And so I might go on, and show how these circumstances which have been testified to have occurred.

My very calmness has been brought against me. My trust has been in my God! I have been advised by my counsel to remain as calm as possible.

That money paid Dr. Parkman I had positively laid by, from day to day, in this little trunk, and, unfortunately, no one can be produced who saw me pay it. Several years ago, I had been in the habit of having students in my laboratory, but, for a number of years, I have prepared everything with my own hands. The reasons why I excluded any one from my laboratory are obvious. I will not allude to them.

This will serve to give the jury an idea of the perversions, as I must call them, which have been brought forward in this case.

Every day, from the Friday of the disappearance, to the following Friday, I never was absent from my home after 9 o'clock at night; and, as to being seen by Mr. Sanderson, it is altogether a mistake. I was at home every night. In regard to where I dined on Friday, I would say, that about 3

o'clock I went toward the omnibus office, to go out, but stopped in at Brigham's, and took a mutton chop. From there I went to Kidder's, and from thence to the omnibus office.

But, accident put it into my power to show that I had been at one place on Wednesday evening. Having occasion to make a little present, I went to Munroe's book-store, and bought Humboldt's late work. I took that book with me, stopped again at Brigham's, and thence went to Mr. Cunningham's. On my arrival, I found that I had forgotten my book. They went to Brigham's, and found the book; but, unfortunately, on the other occasion, I cannot prove the fact; and so it has been with the greatest number of other circumstances. I will not detain the Court by detailing them.

If the Court will allow me to say one word more,—I have felt more distressed by the production of these various anonymous letters, I had almost said, than by anything else. And I call my God to witness, while I positively declare, I never wrote them! Since my trial, my counsel has received, on this day, a letter from this very "Civis"; and if he is present, and has a spark of humanity, I call upon him to come forward, and acknowledge it!

THE CHARGE OF THE CHIEF JUSTICE.

SHAW, C. J. Gentlemen of the Jury: It is with the deepest sense of the responsibilities which devolve upon me, that I rise to address you upon the most important and interesting subject that can be called to the attention of a jury.

But this case has continued so long, it has been brought now to such a crisis, the whole of the evidence and the whole of the argument, being before you—that we feel unwilling, notwithstanding the lateness of the hour, painful, responsible, laborious, as it is, not to go on with the cause, that you may proceed to consider of your verdict.

For this purpose, not because it is not important, but on account of the peculiar circumstances, I shall be more brief

than I should otherwise be. But it is, after all, mainly a question of evidence. The principles of law, for which the Court are responsible, are few, plain, and simple. I shall be able to state them briefly; and it will be my duty to consider the rules of law, rather than make an examination of the evidence itself.

Gentlemen, some appeals have been made to you upon your duties. I think, after what is apparent of this character, after the long work of a fortnight, the mode in which the cause has been conducted, the degree of solemnity which has affected the minds of all, must have already affected you, more than any words of mine can do, with the vast importance to all citizens of their great rights, and, above all, the right to life.

I may make a few and simple observations upon what I consider the real, the appropriate duties of jurors, and of courts, in a case of this description. This is a case in which a party is charged with a high criminal offense—one of the highest known to the laws. We profess to live in a government of laws. And now, by a distribution of those powers which go to make up the powers of a civil community, the constitution has intrusted to another department of the government, the power of making the laws. For that we are not responsible. And whatever may be the view of all of us, or any of us, upon the subject of the particular punishment which that law has appropriated to a particular offense, it is not our duty to consider it. But it is our duty to carry them into execution,—to administer them truly and fairly. And every government must not only have the Legislature to make the laws, but the Judicature to administer them.

The appropriate province of jurisprudence is to take the law as we find it. And when any person is brought before us in the manner required by the law, we are to consider what the law and evidence are, and whether or not he has violated it in any such way as to be amenable to public justice. If so, we are to declare it. Here is a division of duties. The jury have their duty; the Court have theirs; and each is responsible for its own. It is the province of the Court to lay down and

state what the laws are; to regulate the course of proceeding in a particular case; to direct what shall or shall not be considered competent evidence, and, generally, to conduct the trial.

But it is for the jurors to take this mass of evidence into consideration,—to apply their best judgment and their best efforts to ascertain the truth, and then to declare that truth, in what is called the verdict, that is, in the declaration of truth. This is the province of the jury. And while each continues and keeps within its own province, the law will be administered; all will be done which should be done, for the punishment of the guilty, and the relief of the innocent.

With these preliminary considerations, I will consider this case.

This, gentlemen, is an indictment charging the defendant, the prisoner at the bar, with the crime of murder. Homicide, gentlemen, of which murder is one of the highest species, is of various degrees, according to the circumstances. There may be homicide that is the death of another in self-defense; it may be in the execution of criminals, and in other ways. Homicide is a generic term, embracing every species, by which the life of man is taken. It may be lawful or unlawful. It is lawful, when it is alone justifiable, in war, or by an officer, under a proper warrant. And it is also justifiable in self-defense.

It is not necessary for me to go into those distinctions. But I will state them briefly, from the books, and then submit to your consideration the crime with which the defendant is specially charged.

The indictment, in the present case, charges that the present defendant, "Professor John W. Webster, of the Medical College, and professor in the College at Cambridge, did, on the 23d day of November last, violently make an assault upon Dr. George Parkman, and then and there did deprive him of his life by violent means"; and so the Grand Jury declared, that in these forms, or one of them, this crime was committed.

The law provides what the punishment shall be but, in de-

termining what murder is, we all resort to that great magazine, the common law. This provides what murder is; but the statute provides only that the person who shall be guilty of wilful murder shall be punished with death. But the common law of England and of Massachusetts is as much binding as that of our own Legislature. We adopted it when our ancestors settled here. It has been successively adopted since that time, and was introduced into the constitution of our own state; and it has the same force as if it had been specially enacted by the Legislature.

Referring, then, to this, I may as well state it now, from a former memorandum of my own. I ought to have said, that, in rising to address you, it would have been, certainly, more satisfactory to have taken more time. But this would have prevented you from entering on your duty immediately.

But, gentlemen, I will state, therefore, from a former memorandum, revised for this purpose, that an unlawful homicide is distinguished into murder and manslaughter.

Murder, in the sense now understood, is the violently killing of any person, under the peace of the commonwealth, with malice prepense or aforethought, either express or implied by law.

Malice is used in a technical sense, not only including hatred and revenge, but every other unjustifiable motive. If a man should kill another, with a motive of gain, it is unlawful. It is not confined to one or more individual persons; but it is a thing done, "*malo animo*," with a malicious mind, when the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent upon mischief. And, therefore, malice is implied from any deliberate and cruel act against another, however sudden. Manslaughter is the unlawful killing of another, without malice; and may be either voluntary, as that done with a real design and purpose to kill, but through the violence of sudden passion, occasioned by some provocation, which, in tenderness to human nature, the law considers sufficient to palliate it and rebut the presumption of malice; or from acci-

dent, when not accompanied with any intention to take life. Hence, it will be seen that the characteristic distinction between murder and manslaughter is malice express or implied. It therefore becomes necessary to ascertain, with some precision, what constitutes the legal nature of malice, and what evidence is requisite to establish the proof of it.

The authorities, therefore, proceed to state that the implication of malice arises in every instance of intentional homicide, the fact of killing being first proved. Therefore, all the circumstances of excuse or palliation are to be satisfactorily proved, unless they result from the evidence produced against him, showing that if any killing is proved, it must have been with provocation by blows or other justification. And if there is no justification or excuse in the attendant circumstances, the case will be such as to warrant the conviction of the party.

This rule is founded upon the plain and obvious principle, that a person must be presumed to intend to do that which he in fact does; and that he must intend the natural, probable, and usual consequences of his own acts. Therefore, where he assails another with a dangerous weapon, with a weapon likely to do bodily harm, the presumption is that he intended death, or great bodily harm; and as there can appear no proper motive for such a cruel act, in the absence of proof, the consequence is inevitable, that it was done unlawfully. On the contrary, if death is inflicted so suddenly after provocation, and if there be any such cause of provocation, as the law allows, as to make it manslaughter, the act is deemed to be without malice aforethought.

It is a settled rule, that no provocation with words only will justify a mortal blow. Then if, upon provoking language, the party intentionally revenges himself with a mortal blow, it is unquestionably murder. It is a settled rule, that no provocation by words only, however opprobrious, will justify a mortal blow, intended to inflict death. I shall have occasion to explain, that where a pistol is discharged at the body of another; where a heavy bludgeon, or an axe, is used upon the body of another; where a knife is used,—these are dangerous

weapons, and are indicative of an intention to kill. The law will reduce it to manslaughter, if there be provocation sufficient for this. But words are not sufficient for this. It must be at least an assault. The word *aforethought* is used not as simply implying deliberation or the lapse of time, but as rather intended to indicate purpose or design, and in contradistinction from accident or mischance.

I may verify these positions, perhaps, by being permitted to read one or two passages from a work of good authority—one from which passages have already been read to you, by opening counsel for the defense,—from the Pleas of the Crown, by East, a gentleman afterwards one of the Judges in India.

East's Crown Law, chapter 5. section 2: "Murder, in the sense now understood, is the voluntary killing a person under the King's peace,"—and, in my definition, I use, in place of that term, the words, under the peace of the commonwealth,—“of malice prepense or *aforethought*, either express or implied by law; the sense of which word malice is not confined to a particular ill-will to the deceased, but it is intended to denote, as Mr. Justice Foster expresses it, an action flowing from a wicked and corrupt motive, a thing done *malo animo*, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent upon mischief. And, therefore, malice is implied, from any deliberate, cruel act against another, however sudden." Sec. 12: "The implication of malice arises in every instance of homicide amounting in point of law to murder; and in every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity, are to be satisfactorily proved by the prisoner, unless they arise out of the evidence produced against him. But it is intended here only to speak of the more deliberate and depraved species of that offense, where a mind has brooded upon its prey, and marked out the object of destruction in cool blood; and not where there is heat of blood arising from provocation, or from mutual combat." Where there is a use of a dangerous weapon, where it is intended to destroy life, or to

do some great bodily harm,—and I use this qualification of some great bodily harm, because a person may use a dangerous weapon, and say that he did not intend to kill,—if he intended to do some great bodily harm, and death ensue, it is not enough for him to say, “I meant merely to wound him, but the blow unluckily killed him”: it is no excuse: he intends to do great bodily harm.

Then, what is that will reduce murder to manslaughter? It is said, in the passage that has been read, that it is out of regard for the frailty of human passion. Every man, called upon suddenly to defend himself, is inspired with a principle which puts him upon resistance; and if, during that period, he attacks the party thus injuring him, by blows, and death ensues, it is regarded as done through heat of passion, and not through malice, or that cold-blooded feeling of revenge, which more properly constitutes the emotion, the feeling, the passion, of malice.

And so, again, in an instance which may be presented of heat of blood in mutual combat. Two persons come together, not intending to quarrel; because, if they do intend to fight a duel, then it is murder. But two persons come together. Angry words arise. Then they come to blows. It is immaterial who strikes first, supposing that there is nothing unfair on either side, but it is a fair combat. One seizes an instrument, and strikes a deadly blow. That is regarded as heat of blood; and, though not excusable, because a man is bound to control his passions, yet it is not that higher offense, which is called murder.

We have gone into these distinctions, though there is not much necessity for it, because, where death ensues, and there is no evidence of provocation, or of heat of blood, or mutual combat, the fact of killing implies murder, and the jury would be warranted in finding a verdict of murder. There seems to have been little evidence, in the present case, that the parties had a contest. There is some evidence of angry feelings. But angry words are not sufficient. And, unless these angry feelings resulted in angry words, and words were followed by

blows, then there is no evidence of mutual combat or provocation, on the one side or the other. With these distinctions, and without going more minutely into the law, we will proceed to the further consideration of this case.

The party is charged with having committed the crime of murder upon the deceased. In order to establish this fact, two things are to be proved. In the first place, that death has been inflicted upon the party alleged to be deceased; of course, where he is dead, that this has been inflicted by violence; that it has been inflicted under such circumstances as to exclude, beyond reasonable doubt, any supposition of its being done either from accident or suicide.

If a dead body is found, and seems to have been destroyed by violence, three questions should be asked: Did he destroy his own life? Was it caused by accident? or, was it from violence inflicted upon him by others?

In most cases, there are facts and circumstances which surround the case, which answer the questions at once. If you see the effect, and the cause is apparent, there is no more deliberation. You sometimes find that a Coroner is called. Sometimes it is unnecessary to hold an inquest, although there may be some indications of a sudden death. What is the reason of a Coroner's inquest? A man has suddenly died, and it is proper that there are investigations into the cause of death. You perceive, by the whole course of this trial, by the tenderness of the law for the party deceased, and all connected with him,—by the tenderness, also, manifested towards the prisoner—how carefully and how scrutinizingly the law regards the life of every member of society.

It is not necessary for me to say here—the spirit pervades the whole body of our law—that, before the law, all are equal; and whatever may be the circumstances of the individual, it makes no difference. Life has been destroyed by violence. Therefore, the law institutes proceedings. And whether, as in one of the most recent cases which occurred, it be a colored child in a country alms-house, or whether it be one of the most eminent individuals in the community for science and wealth,

it makes no difference. The same apparatus is provided—the same security provided for every individual. Then, the purpose of the inquest is, when there is a sudden death, that the public shall be informed—and the community have a right to know—how it happened. Therefore, an officer is appointed whose duty it is to go to the spot, take all the evidence arising from the state of things, obtain a jury, and ascertain what are the facts. If, as in the present case, they appear to charge any individual, then that is the basis of further proceedings. If they are satisfied that it is by an act of God, a dispensation of Providence, then they must report that. The result is given to the proper authority. Thus, every means is taken to vindicate the law. If it be suicide, in England, the party forfeits his goods; in our commonwealth, there is nothing of the kind. And, therefore, if it be suicide or accident, no further action is necessary. But if some person is charged with murder or manslaughter, affecting the life of the individual, then it is the duty of the officers to proceed further.

This, gentlemen, is a case in which a person suddenly disappears; in which evidence has been laid before you, to show that he was deprived of life at or about a particular time, under such circumstances as to lead to a strong belief that some person or other had done the act which led to this result.

Now, this is to be proved by circumstantial evidence; that is, nobody saw the act done. And, therefore, it becomes important to state what circumstantial evidence is, and to give you some idea of the mode in which an investigation is to be pursued by the aid of circumstantial evidence.

The distinction between direct and circumstantial evidence is this: Direct or positive evidence arises, where a witness can be called to prove the precise fact which is the subject of the issue in the trial; that is, did one man cause the death of another? That is the fact to be proved. Well, no witness saw it: but can it not be proved? Circumstantial evidence may be of such a nature as to warrant a conclusive belief that somebody did it; and it would be injurious to the best interests of society, to have it so ordered that circumstantial proof cannot

avail. If it were necessary always to have positive evidence, how many of the acts committed in the community, which destroy its peace, which subvert its security, would go entirely unpunished? No, gentlemen: it is not so. There may be evidence quite as strong, indeed, sometimes considered stronger, from circumstantial evidence, as from positive. The attempt to compare one of these means of proof with the other is not based upon sound elements of comparison, because there is no common medium by which they can be compared. Each has its own advantages and disadvantages, and it is necessary to understand them both.

The necessity, therefore, of resorting to circumstantial evidence, is absolute and is obvious. Crimes are secret. Most crimes seek the security of secrecy, and of darkness. It is, therefore, necessary to use another mode of evidence than that which is direct, provided there is another mode: and, thanks to a beneficent Providence, there is furnished a means of proof, in another way, which is quite as strong, and quite as satisfactory, as that arising from the direct testimony of a witness.

But I have stated that each has its advantages and its disadvantages. Now, the advantage of positive testimony is, that you have a man, who, if he is to be believed, saw the act done; and, the only question is, whether he is to be believed. You have the satisfactory evidence of that witness; and, from the circumstances and peculiarities in which he is placed, he may be entitled to belief. The advantage is, that you have a man who testifies to the fact itself.

But, in a case of circumstantial evidence, no person having witnessed the fact, you arrive at it by a series of other facts, which, by long experience, we have so associated with the fact in question, that they lead to a conclusion as direct, as positive, as satisfactory, as if it was derived from positive proof itself. Circumstantial evidence is founded on experience, and obvious facts and coincidences, establishing a connection between the known and proved facts, and the facts sought to be proved.

It must be a fair and natural inference, not a forced or an artificial one. There are some instances where the law has

declared that a fact shall be considered as evidence of such a conclusion ; but it has not commonly been so ; and perhaps the better rule is, that it should not be so. It has sometimes been held, that a woman who is the parent of a bastard child, and who gives no notice of the birth of her child, being found with a dead child, it is to be presumed that she murdered it ; but that is an artificial and not a natural presumption. But, in circumstantial evidence, the inference to be drawn from the facts is a probable one, and it should be a necessary one : the presence of one is proof of the existence of the other.

For this purpose, therefore, each fact which is necessary to the conclusion must be distinctly proved. It is not, therefore, that you may offer partial proof of a variety of facts, and then ask the jury to draw an inference from them. Each fact must be proved, as I have said ; that is, each fact necessary to the conclusion.

It does sometimes happen, as it does in the present case, that facts are offered in evidence, not because they are necessary to the conclusion, but to show that they are consistent with it, and not repugnant to it.

If the proof of one of these facts fails, it does not destroy the chain of facts ; it fails only to give them that particular corroboration. I will only illustrate it by a fact in the present case, which I shall consider more particularly by and by.

Suppose, for instance, there is proof here, which goes to show that the teeth found in the furnace were the identical teeth belonging to Dr. Parkman, as examined a fortnight before, and actually seen by one person the day before his disappearance. This has a tendency to prove that he was the person. The first great fact to be proved being what is called the *corpus delicti*, the body of the crime ;—ordinarily, it is to prove that the crime has been committed.

Now, suppose, at the same time, there is other evidence in the case, of a less conclusive nature,—for instance, the shape, size, height of these various parts, when put together, which would naturally conform to the body sought. Now, this latter view would fall short of being a conclusive circumstance, be-

cause the same height, and the same other indications, might not be so indicative of the individual. They go to corroborate the first evidence thus far, that they are consistent with it; and a great part of the evidence is resorted to, not because each of these particular facts is necessary to establish the main conclusion, but because they go to show that the circumstances are not such as to be repugnant to or inconsistent with it. It must depend upon a basis of facts, which must be as strictly proved by testimony as any other facts must be; the coincidences may be of a physical character, or of a moral nature. The ordinary views and feelings with which parties act are facts, and they are of such uniform operation, that a conclusion may be drawn from them, that, if a person acts in a particular way, he does it from a particular motive: when they are of a physical and mechanical nature, they are very strong—sometimes they may be so strong that there can be no question on the subject. Take an instance where it is natural or physical. Certain circumstances may exist, which are so conclusive as to leave no doubt.

One of the recent cases that occurred in this court was a murder, by stabbing in the heart with a dirk-knife. What were the coincidences in that case? There was evidence tending to show that the party charged had possession of the knife during the day. On the next morning the handle of the knife was found, having been thrown into an open cellar. Some of the witnesses testified that that was the handle of the knife. Afterwards, at a later hour of the day, the blade of that knife was found broken in the heart of the deceased. Now, when the pieces came to be fitted together, no person could have any doubt that that blade was the blade belonging to that handle. No two knives could have been broken in precisely the same way as to produce edges that would so precisely match.

An instance is mentioned in the life of Lord Eldon, that he was in one of the courts, trying a criminal charged with murdering another with a pistol. There was a great deal of evidence tending to show that he was near the place about the time the crime was committed, and other evidence going to cre-

ate suspicion that he was the person who fired the pistol; but still, the circumstances failed to be conclusive of fastening it precisely on the individual, which was the great object of all this investigation. The surgeon stated, in his examination, in the presence of the Judge, that the pistol must have been very near the body. On being asked why, he replied, "Because the body was blackened, and the wad was found in it." Said the Judge, "Did you keep that wad?" "I did," was the response; and the Judge requested him to examine it. It was found that the wad was made from a part of a song; and the other part was found in the defendant's pocket. The two parts corresponded.

I only put these as cases showing what are, and what are not, circumstances from which conclusions may be drawn as satisfactorily as from positive testimony. But these are from physical causes.

There is another class of circumstances, which are to be considered as moral, arising out of the conduct of men in certain situations; because, from long experience, it is known that men act from motives; and that men, in certain circumstances, are likely to act in a particular way. Indeed, this is the only mode in which a great variety of crimes can be proved, because there are many crimes which can be proved only from the intent. Now, the intent is a secret of the heart, which can be known only from his declarations: and those he may express to none, so that they remain known only to Him who is the reader of all hearts, except by external acts.

But it is reasoned from the fact that a man, doing a certain thing, acts in a particular way; and, as I have already stated, in another part of the case, a man is always presumed to intend the natural and usual consequences of his own acts.

The natural conduct of men is such, that fair inferences can be drawn from it. It is necessary, to the proper administration of justice, that such evidence shall be admitted, because it is, in its nature, satisfactory; and, if proved, it is equally conclusive.

There are various other views taken: where, for instance,

probable proof is brought of a state of facts, the absence of evidence tending to a contrary conclusion is then to be weighed, to be considered; and I shall have occasion to consider that, by and by, in another part of the present case. So, if a party who is called upon to meet a charge, and against whom stringent proof is produced, can offer satisfactory evidence to account for the circumstances in which he is placed, in another way, and does not do it, the presumption is, that the proof, instead of rebutting the charge, would have the contrary effect; and, therefore, he suppresses the evidence.

There is another consideration, and that is this: that inferences coming from independent sources, different from each other, and tending to the same conclusion, not only support each other, but support each other with an increased weight of evidence.

To illustrate. Suppose, for instance, in the case just mentioned, that the paper containing the song was produced. It is barely possible that he might have picked up the piece. It is not conclusive that he wadded the gun himself, from the fact of the piece of paper being found in his possession. But suppose, from another, and an entirely independent witness, it was proved that that individual purchased that paper, that particular song, at a shop, the day before; then we have concurrent circumstances, coming from different sources, independent of each other, which bear upon the same conclusion, and therefore have a very strong tendency to establish the result.

Under this head—that is, under the head that a party who can produce proof, and does not do it, thereby, to some extent, corroborates the evidence produced against him—may be referred various other considerations, where it is shown that the party has attempted to suppress proof, has endeavored to prevent things from being known which might make against him; such efforts, when proved, exert an influence against him.

It sometimes happens that a man may be placed in such a situation that he attempts to resort to deception, for the purpose of concealing proofs, when he is an innocent man, instead

of having the fact produced. That was the point in the case produced yesterday, of a man who was convicted of the murder of his niece, because she suddenly disappeared under circumstances that gave rise to the suspicion that she was dead; then he attempted to impose on the Court by presenting another person as his niece. The deception was discovered, and operated against him.

In that light, in connection with these various considerations, certain rules can be applied to circumstantial evidence. The first is, that the circumstance on which the conclusion depends must be fully established by proof. They are facts. They are not less to be proved by competent evidence than if they were the direct proof. Under this rule, great care is to be taken, by guarding against pretended circumstances, which might seem to raise suspicion against the party. There are found, detected; and in general it may be considered as one of the wisest provisions of Providence, that where certain things have happened in reality, there they must, of necessity, correspond; because what has happened once may happen again; and therefore, if the facts and circumstances all correspond, there is then a strong belief in their truth. But, if there be one circumstance repugnant, not consistent with them, then they can not agree; because two things impossible cannot agree. The familiar illustration is: where persons have been slain, and placed in certain positions to make it appear that they had committed suicide. In one case of this kind, there was the print of a bloody hand, a bloody left hand, on her own left hand. It was therefore impossible that the theory of suicide could be maintained.

So in another case, where a man was found dead, shot by a pistol ball, with the pistol in his hand. Of course, this indicated suicide. But, upon an examination of the bullet, it was found to be too large for the pistol; and hence you will see at once that suicide was impossible.

The rule, therefore, is, that the circumstance upon which the conclusion depends must be proved. I have already attempted to distinguish that upon which the conclusion de-

pend, and that which is not essential to the conclusion, but only corroboratory of it. If they are not of that character upon which the conclusion depends, then the failure of any one does not make the case fail, but only fails in the corroboration.

The next rule to which I ask your attention is, that all the facts must be consistent. What has happened may happen again. What is impossible could not have happened. And, therefore, the facts must be consistent with each other. Considering them to be the facts upon which the conclusion depends, if any one fact is wholly inconsistent with the hypothesis of guilt, it, of course, breaks that chain of circumstantial evidence, and puts an end to the case. Of this character, gentlemen, is an *alibi*. And what is an *alibi*? A man is charged with crime. He says, I was elsewhere—*alibi*, the Latin word for elsewhere. Well, if that is true, that cannot be consistent with the fact of his being there at that time. At precisely 8 o'clock, on a given evening, he is proved to be in one place, therefore, he cannot be in another place at precisely the same hour. That has been the source of a vast deal of contrariety, because an *alibi* is easily suggested. With a little contrivance, and a little arrangement of proof, a person may seem to have been in one place when he was in another. If the *alibi* is proved, then it is a certain conclusion, because a person cannot be in two places at the same time. Therefore, showing him to be in one, shows him not to be in the other. But, wherever such proof is attempted, there must be the most rigid and strict inquiry whether the fact is proved to the satisfaction of the jury; and false testimony, in the attempting to prove that a man was in another place from his real one, is open to all the various suggestions of contrivance, such as the appearance of sudden riding from one place to the other, and various other modes of that description.

Another fact, which appears in one of these cases. A man was accused of stealing timber. The evidence was gone through with, and seemed to make a very strong case against him. But, on the whole, it was proved, that, if he did it, he did it alone.

Then a witness came forward and stated that one man could not lift the timber; it would take five. That was sufficient to close the case.

But where the circumstances are proved, where they lead to a certain result, it may not be the same species of evidence; but it is legal evidence, competent evidence, and evidence which is necessary, in many cases, in order that the guilty may not escape. But they must be of a conclusive tendency. Yet, how is that conclusive tendency to be shown? Whether the party had, or had not, the motive to do the act, may be shown; that there was an advantage to be gained by it; plunder to be obtained. The circumstances which the party fails to prove, when he might prove them; the attempt to create and impose false evidence; the attempt to withdraw attention from himself to a third person; to suppress actual facts, and various other modes of this description,—these all tend to show, that circumstances which might have affected that party, as well as any other party, were such as to implicate him, because of something wrong. Having a motive, and nobody else having such a motive, nor there being any other cause of homicide shown—such as making threats, manifesting a disposition to do the act, and various other things—come under the head of what I have stated to be moral coincidences, and facts which coexist with each other. The facts should be, to a moral certainty, exclusive of any other reasonable hypothesis, besides the one proposed to be proved. This is merely an expansion of the last suggestion which I made. They must be such not only as are consistent with the guilt of the party, but must exclude and overthrow every other reasonable hypothesis. They must have a tendency to show that no other individual could, under any reasonable presumption, have done the act which is alleged to be done by the party. They must prove the *corpus delicti*, or the offense committed—the fact that the crime has been committed. The evidence must prove, not only, in a case of homicide or death by violence, the hypothesis presented, but, to a reasonable extent, it must exclude a reasonable hypo-

thesis by suicide, or by the act of another party. This is to be proved beyond reasonable doubt.

Now, then, gentlemen, what is reasonable doubt? It is not possible doubt only, because everything is doubtful. It is that doubt which, after the entire consideration of all the evidence has been taken, leaves the jury uncertain. It is not a mere probability, arising from the doctrine of chances, that it is more likely to be so than otherwise; but a reasonable, moral certainty; that is, a certainty that weighs upon the mind, weighs upon the understanding, satisfies the reason and judgment, that, without leaving any other hypothesis, the facts are such as to implicate the defendant, and do not implicate anybody else. This we take to be proof beyond reasonable doubt; because, if it went beyond that, if it required absolute certainty, as it is of a moral character, this species of evidence would always be insufficient. It is, therefore, that evidence which excludes every other hypothesis, beyond reasonable doubt.

Now, we are to consider these rules as applying to the present case. The charge is a charge against Dr. Webster, of the wilful murder of Dr. Parkman, on the 23d of November last.

In the first place, it is necessary to ask, what is the indictment, inasmuch as it is the duty of the Court to decide upon all points of law, and as the form of indictment is a question of law, under the authority which has been presented here. We have investigated this subject, and I now give the result.

This indictment contains four counts. I will not read them; but it charges the commission of the act of homicide by four different modes of death. Legal proceedings, established by old, long, well-confirmed precedents, sometimes do seem to differ. But the general rule is, that no man shall be held responsible for crime, in any form, until it has been substantially set out in some charge—substantially and formally set out in some charge. But whatever may be the form, the offense shall be fully and formally, clearly and substantially, set forth. It therefore often becomes necessary to set forth several counts. When a person, who does not know these rules, sees

these counts, he is very apt to say that these are inconsistent. But we are to consider that a party who draws the indictment often does not know which charge will be proved; but, in order to meet the evidence, he may set them forth in as many counts as he pleases, and aver as many modes of death as he chooses, and if any one of them is proved, that is all that is necessary to sustain the indictment. Satisfactory proof of any one mode of death is sufficient.

It is said, that there are various forms of indictment adapted to many of the modes in which death may be inflicted. But is not science continually discovering new modes? Suppose, in the chemical laboratory, a person might be held fast, while chloroform was placed over his mouth, until he dies. Suppose such a case has never before occurred. Shall such a party escape on that account? I think not. And, therefore, as in cases of new modes of locomotion, the common law has a rule for all new cases. Not that it foresaw that a steamboat would be built, or that railroads would intersect the country; yet, its general principles embrace all these cases. And, therefore, whatever be the form of death, still the charge in the indictment, if it presents the mode of death in as special a manner as the circumstances of the case will allow, is sufficient.

The same authority that has been cited I will read a passage from. (*East's Crown Law*, chap. 5, sect. 13.) "The manner of procuring the death of another, with malice, is, generally speaking, no otherwise material than as the degree of cruelty or deliberation with which it is accompanied may in conscience enhance the guilt of the perpetrator; with this reservation, however, that the malice must be of corporal damage to the party. And, therefore, working upon the fancy of another, or treating him harshly or unkindly, by which he dies of fear or grief, is not such a killing as the law takes notice of. But he who wilfully and deliberately does any act which apparently endangers another's life, and thereby occasions his death, shall, unless he be clearly proved the contrary, be adjudged to kill him of malice prepense." The mode is not material.

How are we to consider this indictment? The first count

contains the charge of death by striking with a hammer; the second, by some thing nearly like it; the third, by throwing upon the floor, and beating with the hands and feet, and thereby producing death; and the last is the count which I shall presently read.

Now, in a case of this description, if the parties prove, to your satisfaction, that Dr. Parkman lost his life by any means suggested, of which there has been proof offered, perhaps the reasonable probability would be, independent of any direct proof about the body, that it was done by a blow, or a stab in the side, or something similar; and, therefore, if such fact were proved, it might be considered sufficient. It may be impossible to determine in which of these modes death was produced; yet, if it was made in some of the modes suggested, then it will warrant the finding against the defendant.

The last count is as follows:—

“And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said John W. Webster, of Boston aforesaid, in the county aforesaid, in a certain building known as the Medical College, there situate, on the 23d day of November last past, in and upon the said George Parkman feloniously, wilfully, and of his malice aforethought, did make an assault on him the said George Parkman, in some way and manner, and by some means, instruments and weapons, to the jury unknown, and did then and there, feloniously, wilfully, and of his malice aforethought, deprive of life, so that he, the said George Parkman, then and there died; and so the jurors aforesaid, upon their oaths aforesaid, do say, that the said John W. Webster, him the said George Parkman, in the manner and by the means aforesaid, to the said jurors unknown, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace and dignity of the commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.”

The Court are of opinion, and for the purpose of this trial adopt it, that this is a good count of the indictment; and, from the necessity of the case, it is so; because circumstances may

be imagined in which the cause of death could not be introduced into an indictment. Some books enumerate various modes in which death may be inflicted: strangling, smothering, and depriving of breath; but if new modes occur, as the use of ether, or chloroform, continued so as to produce death, the body may be put into such a condition that no one can determine how death was occasioned, and it may be said, "to the jurors unknown." The precaution which is taken in the books in explaining murder, shows that death produced merely by fright or grief is not included. A person who frightens another to death is not, strictly speaking, a murderer. Murder must be some physical force applied to the person. This count charges an assault. That is a technical term, well understood in law; it is something inflicted upon the person and naturally excites sudden and violent resentment.

Then this count charges death, by means, instruments, and weapons, to the jurors unknown. Now, the rules of law prescribe, that the Grand Jury will present the charge with as much certainty as the circumstances will admit. And if there was no evidence by which they could specify more particularly, then this count is conformable to the law. And, therefore, if you are satisfied that the defendant is guilty of the crime charged, this form of indictment is sufficient to warrant a conviction. This is all, I believe, it is necessary to state, with regard to the form of the indictment.

Then what is necessary to be proved? It is necessary, in the first place, to establish the *corpus delicti*, or the offense charged; that the death was effected by violence, and that the circumstances are such as to exclude accident or suicide.

Now, gentlemen, what are the facts charged? They are these: It is alleged that, on the 23d of November, in the forenoon, Dr. George Parkman—very well known by most persons in this vicinity—was in good spirits and health; that he walked with Mr. Shaw down town; that he was seen, in different places, that forenoon; that he was traced to different places, until between half past 1 and 2 o'clock; that he was seen about to enter the Medical College; that, having gone in,

he never came out of that college alive; that he was missed as soon as he would naturally be. It is further charged that no general proclamation was made till Saturday morning. Search was made for him, in various directions, on Friday and Saturday morning, but it was not thought best to make a public proclamation until the cars on the various railroads came in at noon; at that time the police were called into action, and search was made. That such search was continued, with great activity, in all directions where there was any likelihood of his being found, until the termination of a week; that certain remains of a dead body were found, which led to the arrest of the defendant; that the next day, proper examinations were made; and that there were further discoveries—that further parts of the dead body were found, and examined, under such circumstances as to induce a reasonable belief that they constituted portions of the dead body of Dr. George Parkman. This is the charge; and you are to decide whether the evidence does, or does not, tend to charge guilt upon the defendant.

In the first place, is the crime proved? If the party was in good health, and in good spirits, and that he so continued to the day of his disappearance, by the evidence before you, this must be considered a fact, until something to the contrary is shown. It is alleged that he went to the college, and met Dr. Webster. This is admitted by himself; but then the question arises, whether anything further was heard from him.

Three questions, then, arise in the present case. First,—were these the remains of the body of Dr. Parkman? And if so, were they found under such circumstances as to exclude any belief that he came to his death by accident, or suicide, so as to leave the other conclusion, that he came to his death by violence? And if so, then by whose hand?

In the first place, then, gentlemen, it seems to be proved, by testimony that is unquestionable, that he disappeared some time in the forenoon, so far as his family are concerned, on Friday, the 23d of November, and that he did not return that day to dinner. That is a fact uncontested.

Then another question arises. Whether any other mode or

cause of that disappearance is shown? It is argued that the search which was made was unusual, was unprecedented, was extensive; that every line of inquiry was followed up, which seemed to indicate a favorable result, and no discovery made.

Perhaps, as the first point on the part of the defendant was on the score of the *alibi*, it may be as well to refer to that; because, if, after the time when, by the probable circumstances of the case, it would appear from the proof that his life was destroyed in the Medical College, if at all, he was seen elsewhere, of course, that would be a circumstance inconsistent with the allegation that he was last seen entering the Medical College. If the *alibi* is made out, it is conclusive in his favor.

Now, the question is, whether he was seen. There is a point made afterwards, to which it may be necessary to allude. When you are called to consider the evidence of any particular fact, of course, you are to decide upon the preponderance of the weight of evidence in favor of or against it. And, therefore, when a certain amount of evidence is adduced to establish one conclusion, if there is a vast, overwhelming amount of evidence, to establish the other, however the proof might have been if it stood alone, it will not stand against the greater mass of testimony.

The witnesses in favor of the *alibi* of Dr. Parkman are Mrs. Hatch, Mr. Thompson, Mr. Wentworth, Mr. Cleland, Mrs. Rhodes and her daughter, and Mrs. Greenough. It is not necessary to go over all their evidence. You will remember that the notice of Dr. Parkman's disappearance appeared in the public papers on Saturday afternoon; that on Sunday a general inquiry was made; that on Saturday afternoon and evening, and on Monday, they had a pretty thorough search; and so it continued, up to the succeeding Friday, when the remains were found. No doubt, during that period, there were various stories, as to his having been seen during the day of his disappearance. It may be very probable that there were some accounts which were made during that period, and very honestly made, by the persons who thought they saw him. But, I said that this was to be compared with the evidence on the

other side. Gentlemen, perhaps it is somewhat peculiar to our own country, but it is perfectly well known to all men of experience, that, when a great event of this kind arises, which fastens upon the mind of the public, the whole community are resolved, at once, into a body of inquirers. Everybody tells to everybody else whom he has seen, and what he has seen, within the last twenty-four hours, or within the last week. It is upon those statements that at last a line of inquiries is made, which leads to the true result. One says, I saw such a thing; and another, another thing; but, when compared, they do not agree.

There are two circumstances which apply to proof of *alibi*. In the first place, there is the uncertainty which applies to the fact, not to say anything about an intentional misleading; but a witness is always liable to be mistaken. Then, in order to establish the fact, it must be proved beyond reasonable doubt, that the party was seen at the precise time and place where he is alleged to have been seen by the witness. And that is the difficulty with regard to proof of *alibi*. There is always room for the difference of time to be explained, owing to the difference of time pieces, which sometimes vary five or ten minutes.

On Saturday, notice was given. On Sunday, his disappearance was pretty generally known in the west part of the town. I believe, on Monday morning, it was universally known in the city. Then thousands were put upon their recollections, to say whether they had seen Dr. Parkman, where, when and under what circumstances. Now, he was a person very well known. Perhaps no man of his age and situation was better known here, in person, than himself. Now, notwithstanding this proof the question is whether he would have been likely to have been seen by many persons, if he had been moving through the streets in the manner indicated by this testimony. Judge for yourselves. Would there not have been hundreds of thousands of persons who would have seen him, and have testified to it? This, however, is negative testimony. But if anything happens, and persons do not see it, if they were placed where they might have seen it, this, though negative, leads to an affirmative result. That is one of the modes to lead you to a view of

the truth. If you are satisfied that there were a great number of persons along the streets where he was said to have been seen—Cambridge, Court, Washington streets, etc.—would there, or would there not, have been a great variety of persons who would have confirmed that statement? If so, it is a comparison of the testimony, negative on one side, positive on the other.

Now, it is said, that positive testimony is more available than negative; and it not unfrequently happens, in proof of this sort, that one witness sees one thing, which another did not. Now, when two persons are placed in a position to observe, and one says that he did see it, and the other says that he did not, I do not see why they do not contradict each other. For, though one is negative, and the other positive, yet, if the one who testifies that he did not see it was placed in a position in which he would have seen it, if it had occurred, they are contradictory.

Owing to the dimness of the hour at which he was said to have been seen by Mrs. and Miss Rhodes, it is possible that they were mistaken in the individual. They may have been mistaken, also, in the day. If a person says, "I know it was the day, because I wrote a note on that day," he may have misdated it at the time, which is a matter of common experience. One of the papers in this case bears upon its face an impossible date, having been dated the 31st of November. If the actual proof is such as to show that the deceased party lost his life at or about 2 o'clock, in the Medical College, then it is impossible that he should have been seen after that time; and, whatever may be the causes, it must be that the parties were mistaken. But this depends upon the main evidence brought to establish the case. If that puts it beyond reasonable doubt that he was there, and at that time murdered, then it places it beyond reasonable doubt that he could not have been seen at a later hour.

One remark with regard to those different persons who saw him in the course of Friday afternoon. They do not come to establish any one theory. Now, if he had been seen by one per-

son in one place, and subsequently by another person in that direction, and so on a certain length of distance and time, then they would have tended to corroborate each other.

Mrs. Hatch is not relied upon. The other testimony is, that he was seen by Mr. Thompson, who came from East Cambridge and who estimated his time by the East Cambridge court house clock—a new clock, and proved by some witnesses to be irregular; by Mr. Wentworth, who saw him in Court street, nearly opposite Mrs. Kidder's; by Mr. Cleland, who saw him in Washington street; and by Mrs. and Miss Rhodes, who saw him in Green street, going in an opposite direction to them, as they were going home, to Chambers street; and Mrs. Greenough saw him in Cambridge street. They do not seem to correspond with any one theory.

If the other evidence is sufficient, it goes to show that this must have been a mistake. But this is proper evidence to compare with the other evidence; and, therefore, if of such a character as to raise in your minds a reasonable doubt, and if the contrary be not proved beyond such reasonable doubt, the case of the government is lost, and the defendant is entitled to an acquittal.

The difficulty of establishing such proof is, first, as to the day; second, as to the time of day; thirdly, as to the identity of the person. Then contrast it with the supposed controlling proposition, that if Dr. Parkman had been in those places, other persons would have seen him. Take these things into consideration, and see if a reasonable doubt is produced. It is true, that the time is not of itself material to this case. If it should be established that he was seen at half past 1, or 2, or 3, or 4 o'clock, still the crime may have been committed. But the importance of this proof is this: Inasmuch as all the proof on the other side, tends to establish the fact that he did go, about a quarter of 2 o'clock, into the Medical College, and that he did not come away, then it would have a tendency to control that proof and render the fact doubtful. But if the evidence is otherwise, such as to prove that Dr. Parkman lost his life at the college, about 2 o'clock, on Friday, then it cannot be

proved that he was abroad, whatever may have been the source of the mistake. But the question, whether he was abroad, bears upon that proof.

Then the question is, whether the defendant was there upon that day, and did meet Dr. Parkman by appointment, and did act upon that temptation to kill Dr. Parkman. It is not necessary to establish the fact of seducing him there; but, if proved, then all implied malice is laid out of the case, because it is murder by express malice.

On that Friday, Dr. Webster lectured. It was the last day he was to lecture, previous to the ensuing week. He remained there, as he says, till about half past 1 o'clock, and did meet Dr. Parkman, and paid him the money. Tracing the evidence, then, with regard to Dr. Webster, it appears that he was at Mr. Kidder's that afternoon; and there is some evidence tending to show that he was at the college about 6 o'clock. This testimony is from Mr. Preston, a medical student, who was in the low wing, at the west end, where the students are in the habit of practicing dissection, daily and constantly. Mr. Preston says he was coming out of the dissecting room at about 6 o'clock. I think you will recall his testimony, though it was given pretty early in the trial. He states that he had an engagement at 7 o'clock; that his own tea hour was half past 6 o'clock; and that he started early enough from the college to reach home in season for tea; so that he states it at 6 or half past 6, that he saw Dr. Webster passing into the college shed.

This is the evidence of that day. If there is no evidence beyond this—if Dr. Parkman is not seen afterwards—then the conclusion seems to be strong, that, having gone there in good health, and in one week found bereft of life, he came to his death, not by accident, not by the visitation of Providence; because, if it had been by accident, it would have been known,—there would be no motive to conceal it. The concealment, therefore, has a tendency to show, from the facts and circumstances under which this body was found—if that was his body—that he came to his death by violence. You will judge whether that is a natural and proper conclusion.

If so, then the question arises, Were these his remains? Was the body of Dr. Parkman found? It has sometimes been said by Judges, that a jury never ought to convict, in a capital case, unless the dead body is found. That, as a general proposition, is true. It sometimes happens, however, that it cannot be found, where the proof of death is clear. Sometimes, in a case of murder at sea, the body is thrown overboard, in a stormy night. Because the body is not found, can anybody deny that the author of that crime is a murderer?

Now, about the mode of death. Suppose that a man is struck, on a deck of a vessel. His skull is fractured, and he remains for a length of time insensible. Suppose that, while in this condition, he was thrown overboard. The evidence tends to show either that it was death from the blow or from drowning, though we cannot tell which; and yet, it may be said that it was certain that it was one, and as absolutely uncertain which it was.

It is not necessary for me to go into all the evidence. The remains were in three places. One was the privy, (and when we speak of the privy, we refer to the cellar of the building, the corner only of which was used as a privy;) a second part were found, partially calcined, in the furnace; and still other parts in the tea chest; and all the parts being found near one place, and all connected with one apartment. If these places were resorted to for concealment, you will judge whether the person who concealed one part is the same that concealed the other. If a person had a motive to conceal one part, then he probably had a motive to conceal the other.

These are thought, by the witnesses, to be parts of one human body. But if, upon examination, it were found that there were two right legs or right arms, they could not be the remains of one body. They might, perhaps, have been the remains of anatomical subjects. It is, therefore, of importance to ascertain whether they were parts of one human body. If all the parts coincide with each other as one body—those parts that were found in the basement, and those found in the tea chest, and those in the furnace, all corresponding—then

the natural conclusion would be, that the same person who concealed one did the whole, and that they did belong to the same body. Then the question would be, whether those were parts of a body used for dissection; because, finding a dead body in the Medical College, the first natural conclusion would be that they were parts of a body used for dissection. Then the question is, whether that is negatived. The physicians have testified as to the manner in which the dissection was performed. Dr. Holmes and Dr. Wyman have testified. Dr. Ainsworth says that it is his business to keep an account of the subjects; and as they now have the sanction of the laws in furnishing the means of obtaining subjects, it is necessary to keep accurate accounts of them. He testifies that all are accounted for.

It is testified to be a uniform custom, when a subject is brought for dissection to the Medical College to make some preparation before dissection commences.

That is done by injecting the arteries with some chemical substance, which tends to preserve the body. This, therefore, is the first question, to ascertain whether these remains were parts of an anatomical subject. One inquiry was, had the blood vessels been injected? That could be ascertained by chemical analysis. Portions of the blood vessels were taken out, and committed to the examination of Dr. C. T. Jackson, and that late eminent chemist, Dr. Gay, and Dr. Crossley. In consequence of Dr. Gay's death, his examinations were not finished, but were concluded by Drs. Jackson and Crossley; and they testified that these arteries had not this anatomical injection.

Now, then, the first evidence that was offered was, that these parts were laid in juxtaposition, and that they appeared to correspond in height and figure with the body of Dr. Parkman. Here is one of the cases to which the rules of evidence apply, to which I called your attention in speaking of circumstantial evidence. If this had been alone relied upon, as proof of identity, it would be left doubtful; because parts of the body were wanting, and those the parts by which identity is commonly established. Had there been marks upon the

portions of the body which remained, and they could have been proved as natural or artificial marks upon the body of Dr. Parkman, of which there was no evidence, it would have tended to prove identity. If there be, in the teeth, sufficient evidence of the specific identity of these remains with those of Dr. Parkman, then the fact that they did not differ, in shape, size, or height, from those which did belong to him, would have this effect: they would not, of themselves, be sufficient to prove identity; they would be comfortable to the supposition that this was the body of Dr. Parkman,—not opposed to it, and yet not specific enough to be direct evidence of it. You are, then, to determine whether the body was identified by the teeth.

It is scarcely necessary for me to do more than to name the witnesses which have been called to testify upon that subject. It is certainly a very interesting inquiry, whether the teeth can be identified or not. It cannot have escaped notice, how great a similarity there is in this to the investigation of what are called fossil remains. Persons have studied the anatomy of the bodies of reptiles, and of the lower orders, to such a minute degree, that from the figure, from the openings, they are able to say, from a single bone, even what class they belong to, and thus trace the inquiry, and ascertain the existence of races and species of animals. But still you are told here, by the anatomists,—by Dr. Jeffries Wyman, who is reputed to be excellent,—that by finding a small piece of bone, it is possible to determine to what part of the body that belonged. There are particular parts through which particular nerves, or vessels, pass, by which it can be determined that they are parts of the temporal bone, the cheek bone, or some other.

Dr. Keep was called, and stated that, three years previous, in 1846, he made teeth for Dr. Parkman, to whose teeth and stumps various adjustments were to be made. He testifies that they were adjusted and fitted. Now, the gold having been melted, but the blocks of teeth remaining, with several peculiar angles and points, the question was, whether he could ascertain their identity. It is merely necessary for me to refer you to this testimony. He was of opinion that he could identify

them; he was satisfied that they were the teeth of Dr. Parkman. If you are satisfied that that conclusion was right, then this testimony is of a very different character from that of the shape and size, and has a strong tendency to prove that it was the body of the deceased person. I barely refer to the persons who have testified to this. Dr. Keep, with his assistant, Dr. Noble, think that they can identify these blocks of teeth. Dr. Morton is of opinion that there is not enough to enable an artist to identify them. And with regard to all that, Drs. Harwood, Codman, and Tucker, have testified the other way.

You are to determine, by all the testimony, whether those were the teeth of Dr. Parkman, and belonged to the same body as the other parts; and, if so, it has a strong tendency to a proof of death by violence, and then the *corpus delicti* is established; otherwise, not. If this is not proved to the satisfaction of the jury, beyond reasonable doubt, then the dead body is not proved to be that of Dr. Parkman, and the proof of the *corpus delicti*, as offered by the prosecution, fails.

But if this is satisfactorily proved, then the next question for the jury is, By whom was it done? I have already submitted to you the question, whether or not these belonged to the same person. If they belonged to the same person—if these were the teeth of Dr. Parkman,—(you will recollect the reasons that they gave why the teeth were in the head before being put into the furnace,)—then one part, being identified identifies the rest.

Gentlemen, I shall pass over all that has been said in regard to Mr. Littlefield.¹ I am not aware that the conclusion depends upon his testimony. You are to judge of, and give that weight to it, as you think it deserves, so far as it should

¹ On July 24th, two months after his conviction and a month before his execution, Dr. Webster expressed a wish to see Littlefield. The latter came to the prisoner, when Dr. Webster told him he had done him great injustice and asked his forgiveness, saying: "All that you said was true. You have misrepresented nothing. But as a dying man I have no recollection in regard to the sledge hammer. I cannot bring my mind to bear on it."

command attention. It is not impeached. You will attribute to it the value and importance which it merits.

Before proceeding away from this question of the remains, it may be proper to allude to the fact which was stated by Mr. Littlefield—I am not sure that it was by any other witness—that is, why these remains were not placed in the dissecting vault, instead of being placed in the laboratory and cellar. Seeing limbs there, would have excited less suspicion. Mr. Littlefield says that it was double locked; and that, though the key was there, it was in a dark place, and he had charge of it. I state several things here, as I happen to find them upon my minutes, because they may as well come in at one place as at another.

The general outline only of these facts it is necessary to state. Undoubtedly, from Monday and Tuesday, till Friday, there was a pretty close watch kept on the Medical College. On Monday, one of the family went there,—Dr. Samuel Parkman; Mr. Kingsley, and two officers with him, were there also. A more thorough investigation was made on Tuesday, by four officers, yet probably not particularly thorough, but every part had been looked through, at least, except the vault. I speak of it as a vault, because, though it is a large section of the cellar, yet it is separated from the rest by a solid wall, and separated from the dissecting vault. The privy leading from the lower laboratory was the only means of access to it, except by taking up the floor, or by making an aperture through the brick wall. Every part of the building had been searched except that.

With regard to the conduct of the defendant at the time of the arrest and since, it strikes us that not much can be drawn from it. Such are the various temperaments of people, such is the rare occurrence of an arrest for this crime, who can say how a man ought to behave? How can you say that he was too much moved, or too little moved? Have you had any experience how you would behave in such a position? Judge you concerning that. The facts are before you, regarding his conduct and language. They are a part of the evidence, but it

strikes me that they cannot be very important: if the testimony is sufficient without, then this species of evidence is unnecessary; if they are not, then the conduct seems not sufficient to give any conclusive effect to the other proofs.

Now, gentlemen, there are two things to consider. From the law which I have read to you, it appears that if two persons meet, and one voluntarily destroys the life of the other, and no evidence appears, either in the testimony brought to convict him, or in that produced in his behalf, to show provocation, or heat of blood, it is held to be murder, or homicide with malice. I have stated that malice may be either implied or express. Malice express is where there is evidence of design, in the previous acts or conduct of the accused.

Murder by poison must be by express malice, because there must have been preparations previously. But whether malice, in any case, be express or implied, it is always murder, if the homicide be voluntary, and not death produced in heat of blood.

There are two theories on which this is thought to be murder. One is that it was by express malice, and the other is that it was by implied malice; that is, that if the express malice is not proved, and if the mitigation to manslaughter is not proved, still, in cases where there is not accident or suicide, it is murder by implied malice.

The theory on the part of the government, is that Dr. Parkman was the creditor of Dr. Webster; that he held two notes against him; that one was given as early as the year 1843, for \$400 or \$500; that, afterwards, another note was given, in which Dr. Parkman advanced another sum, making up in the whole \$800, and other friends of Dr. Webster contributed enough to make up the sum of \$2400, so that, when collected, it would be partly his own and partly the money of others; that Dr. Parkman had insisted very urgently for the payment till the time of his death. It would seem, from the facts which appear in the case, that what he was urgent for was the payment of his own debt. Now, although he held the note for \$2400, which was not due till March, 1851, still, that embraced

the \$500, and the \$332, a part of the old note; so that this smaller note, though not given up, was to be considered as paid when the larger note should be settled. You perceive, therefore, that he held two notes, one due to himself, and one due to himself with others; that he had pressed for payment rather earnestly; that Dr. Webster had put him off; that the time had come for receiving the annual stipend; that Dr. Parkman had expected to receive his pay at that time; that Dr. Parkman wished to obtain the money received from the sale of tickets; that this fact was received from Mr. Pettee by Dr. Webster himself; that, on Monday evening, Dr. Parkman called at the college, and urged Dr. Webster very strongly for payment; that the reply was, that he could not pay him on that day; that he was finally put off until Friday.

It seems, however, that, in the interval, he was seen, on Thursday, to go to Cambridge. Now, the paper which was found in his possession, being a paper drawn up by Dr. Webster's friend, Cunningham, will exhibit the pecuniary transaction between these two parties.

The suggestion is, that Dr. Webster called at Dr. Parkman's house on that Friday morning, and said that, if Dr. Parkman would come to the Medical College at half past 1, he would pay him. The ground taken on the part of the prosecutor is, that this was done for the purpose of inducing Dr. Parkman to come there, without the intention of paying him; that he did not pay him; that he had not the means of paying him; but that his object was to get possession of those notes on which this claim was due. And, in consequence of this engagement, Dr. Parkman did go; that Dr. Webster, instead of being prepared to pay his debt, took measures to destroy the life of his creditor, with a view of getting possession of the notes, without payment; that he did get such possession; that he then gave out to the world that he had paid \$483.64, which was the smaller note; and therefore that the object was an act of plunder, and that, too, by taking the life of the individual. If that is proved to your satisfaction, undoubtedly it is a case of express malice.

If proved, I cannot distinguish between this and a case of property found upon the person alleged to have plundered another of his property. Such possession, established by proof, beyond reasonable doubt, tends to show that plunder was the object for which the act was done.

Gentlemen, you will have the notes. There is abundant proof about the pecuniary transactions between Mr. Pettee and Dr. Webster. Mr. Pettee was an officer who was appointed to collect the dues from the students. He testifies to you that he happened to be at the Medical College on the morning of that Friday, and that he went there for the purpose of paying Dr. Webster \$90, which was due to him, having paid him \$250 or \$260 before. \$500 was received by Mr. Pettee to Dr. Webster's credit, at one time, about half of which was paid to Dr. Bigelow. You will compare these statements of Mr. Pettee with the bank book, and say whether these were the sums received by Dr. Webster during that period. There is one of the circumstances which is very significant, and that is, that the \$90 paid, on the morning of that Friday, to Dr. Webster, by Mr. Pettee, was not a part of the money used for the payment of the note, for \$483.64, which Dr. Webster stated that he paid on that day; because it appears that that was paid in a check on the Freeman's Bank; and also that on the next day, though possibly on that day, after 2 o'clock, but not credited, as it was after bank hours, until the next day, when the check was entered to his credit, on the books of the Charles River Bank.

Mr. Pettee says, that he told Dr. Webster that he did not choose to be troubled by Dr. Parkman; and, on account of his desire of avoiding Dr. Parkman, he had previously told Littlefield to inform Dr. Webster that he would meet him on that Friday morning, at the Medical College to pay him whatever sums were due. He testifies that, though he had some business transactions with Dr. Webster at that time, he thinks he did not mention to Dr. Webster the harsh language used by Dr. Parkman. Still he said he did mention that he had had

trouble, and that Dr. Webster said, "There would be no difficulty about it, for he had settled with Dr. Parkman."

If this engagement with Dr. Parkman was made by Dr. Webster, with the purpose of getting possession of those notes, and by means of this arrangement he did get possession of those notes, it would be a very strong case of murder by express malice. A fact, if it be so, that there was still money due on the larger note—I mean, money not paid, and which was not due for more than a year—would be a still stronger circumstance than finding the note that was due; because it is stated now, by the defendant, that he had collected money for the purpose of paying the \$483, but he has not stated that anything more than that was paid. The evidence to show that these two notes were found in the possession of Dr. Webster, upon a search of his house at Cambridge, is before you; and you will judge whether it proves the fact beyond reasonable doubt. This is one of the facts, in the chain of evidence, which the Court deem material; without which, the chain of circumstantial evidence would not seem to be complete.

It was my intention to examine all the testimony of his own account of the payment of the money. I think that you will find that the statement made to Mr. S. Parkman Blake was one of the fullest. I intended to read it, but I think it is not necessary. He says, that Dr. Webster informed him, that, about the time of the engagement, namely, at half past 1 on Friday noon, Dr. Parkman came to the Medical College, and that he paid him in the smaller room; that he took the money, and started off hastily, with the money and papers in his hands; that Dr. Webster said to him, "You have not cancelled the notes;" that Dr. Parkman turned and dashed his pen through the signature, and was then hurrying away, when Dr. Webster spoke to him about discharging the mortgage; that he replied, "I will go and see to that." This mortgage turned out to be on personal property. The office was, therefore, that of the Town Clerk, at Cambridgeport, and not at East Cambridge, as was supposed. But, if you find that money was due on the other note, and that that note was obtained without pay-

ing anything, you will have to consider the motive for it. If it is proved, this may tend to make out a case from circumstantial evidence, because it would tend to connect the defendant individually with the possession of the note, having a motive to obtain it.

Then, there is a great variety of circumstances, tending to show the acts of the defendant in concealing these remains. Now, if it be surmised that these remains were placed there after the death of the party, and without the knowledge of Dr. Webster, of course, this concealment would not affect him. But I have already stated that the three portions were so situated, with regard to each other, that whoever had a motive to conceal one probably had a motive to conceal the other. And if this was done under circumstances so as to render it necessary that it must have been done with the knowledge of Dr. Webster, that strengthens the conclusion that it was done by him, or, at least, with his concurrence.

It is not necessary to go through all the circumstances relied upon to show the conduct of the defendant after he was arrested. If the defendant was charged with the guilt of murder, or if any man found himself charged with the guilt of such an offense, and the circumstances remain unexplained, they might tend to show an apparent consciousness of guilt.

Dr. Webster's conduct, we think, ought to be considered to have a very slight bearing. There is nothing, from the experience of the jury, to show how men will act when charged with such a crime.

The fact, in regard to Dr. Webster's statements, made to different persons, that he never mentioned two notes, and yet two notes are found in his possession, would go to show motives of a conclusive character. So the fact, that these papers were found in his possession, or custody, in Cambridge, is of importance. It may be that he alluded, in his letter to his daughter, to the package given to his wife a day or two before, when he had been applied to obtain some citric acid. The letter does not say package, but "bundle." Whether those were the papers which he requested to be concealed, would be im-

material, and, therefore, it would be immaterial whether that was the package which he referred to, because the papers themselves furnish the material evidence. But if it referred to them, the letter itself might go a little further, and show that he thought the possession of those papers might be hazardous to him; and, therefore, the attempt to conceal them, if proved, would bring it within the rule, that the attempt to suppress proof, or to alter any of the facts in the case, would go against the accused. But if it led to a search, and hence these papers were found, the papers have the same effect, whether it alludes to them or not.

It is sometimes said, that small circumstances go to show great truths. Identity is sometimes proved by small circumstances. It is argued, on the part of the prosecution, that a piece of twine was tied about these remains, similar to what was found in Dr. Webster's room. Gentlemen, whoever undertook to destroy these remains, whether the defendant or any other person, had access to the rooms of the defendant, and undoubtedly would use all the means within reach, whether under lock and key or not; to a person with such views, a lock would be of little avail. The whole apartments may be considered to be under the control of Dr. Webster. Of his knowledge of the fire, and his presence, you can judge from the evidence. With regard to this twine; that somebody had the intention of concealing these remains—proposing first to conceal them, then to destroy them,—is pretty manifest, from the manner in which they are covered up and concealed. The same person who had the motive to do one, probably did the whole. The same person who packed up the body, used the cord; it seems a slight circumstance. By not dwelling upon these various circumstances, I do not intend to withdraw them from your consideration. But the time admonishes me that I must draw to a close.

I might enumerate the witnesses. They are very numerous. The persons who speak of the search are, Messrs. Shaw, Blake, Tukey, and others. As shown by witnesses, Dr. Francis Parkman and Mr. Blake, the conduct of the defendant, at different

times, was of such a character, and he was in such a situation, that you will judge how far any statement made by him at those times ought to be considered as evidence bearing much against him.

There is one circumstance, which is dwelt upon with some force, by the prosecuting officer, which ought, in the opinion of the Court, not to be considered against the defendant. That is, that he waived an examination in the Police Court. Here was the inquest charging him with murder;—what is the purpose of the Police Court? It is simply to find *prima facie* evidence, to warrant a commitment. It is customary, oftentimes, to waive an examination there. The magistrates would not go into as thorough an examination in that Court as here. Its object is simply to ascertain whether a warrant shall be issued for the commitment of the accused. His waiving an examination there seems to us immaterial, more especially as there had been an inquest, charging him with an offense. (The Judges consult together.) I am told there had been no inquest at that time, but that is immaterial. There was sufficient evidence to hold the party for trial; and that is all that is required.

Then, gentlemen, the question of the anonymous letters. If a person attempts to divert attention from himself, more especially if it is to fix attention upon others, that is one of those circumstances, arising out of human conduct, when an individual has been guilty of crime. But the facts cannot be proved certainly; and unless they are proved beyond reasonable doubt they are not material. This only goes to show that, if the proof existed without them, they would corroborate it. But if the letter marked "Civis" is written by him, you will judge whether he was placed in such a situation as to induce him to write it. A man may be placed in such a situation that he thinks there are strong circumstances against him, and, without actual guilt, may attempt to ward off proof. But proof is necessary. With regard to the other two letters, the proof is slight. You will judge for yourselves whether any of them were written by the defendant.

If this act of homicide was committed by Prof Webster, and there is not sufficient proof to mitigate the crime to manslaughter, then the conclusion would be that it was murder by implied malice. If the other assertion is proved, that it was intended to decoy him to the college, to do this deed, that is express malice. If it is not proved that he was there, then there must be a general verdict of acquittal.

There is another point. It is competent for a person accused to give evidence of character. Now there are cases in which a man may stand in such a situation that a good character would be very important to him. A stranger may be placed where there were circumstances tending to charge him with larceny, or with some other species of crime. He may show that, though there are suspicious circumstances, yet, where he is known, he is esteemed to be of perfectly good character; and that sustains him. Such a character may defend him from such a crime. But where it is a question of a great and atrocious crime, it is so unusual, so out of the ordinary course of things, he must have been influenced by such facts and circumstances as to create effects which have unfrequently been produced upon a human mind, so that the evidence of character may be considered as far inferior to what it is in the case of smaller crimes. Against facts strongly proved, character cannot avail. It is therefore in smaller offenses, in such as relate to the actions of daily life,—that if a man be charged with being light-fingered, for instance,—he may bring evidence with regard to his character, showing that he would not be likely to yield to a small temptation. In such a case, evidence concerning character may be given with some effect.

But with regard to the higher crimes, the mere possession of a good character, though of less avail, is competent evidence to the jury, and is one of a species which the party has a right to offer. The party accused may give evidence of it; and if he does, the party opposed may present evidence to contradict his witnesses. But a person who is charged with such an atrocious crime as this, ought to prove his character by very strong evidence, to make it counter-balance strong proof on the other

side. It is not competent for a prosecutor to give in proof of the bad character of the defendant; and it cannot be done, unless the party on the other side puts in evidence of his good character.

Gentlemen, we commend this case to your serious consideration. It is impossible that a great many things should not be omitted. I shall feel rejoiced if I have stated such of the main considerations of this case as shall enable you to come to a fair and just conclusion. Many things press upon my mind which I intended to mention; and yet I have taken as much time as I ought to take.

Gentlemen, we commend this case to your serious consideration. Weigh it under the rules of law. Consider that you have been called upon and set apart; in the first place, drawn by lot from those most experienced. You have been then selected from the body of those who have been drawn by lot from those most experienced. You have been then selected from the body of those who have been drawn, with all the advantages of which the condition of humanity will admit. And, gentlemen, when it is said that it is possible to err, that is true. It is nothing more than to say that we are human. It is always possible to err. All that we can hope to do—you in your department, and we in ours,—is to exercise the best faculties of our minds, to give all the weight to the evidence which it deserves, to weigh carefully on both sides; and although we should come to a result which, at some future time, may be proved to be erroneous, yet still a consciousness that we have done our duty will sustain us. I commend this cause to your consideration. Take sufficient time, weigh the evidence, and give such a verdict as will satisfy your own judgment, and your own sound conscience, and I am sure it will be a true one.

THE VERDICT.

The *Jury* retired, and the court took a recess. Three hours later (10:50 p. m.), the *Prisoner* was conducted to his seat

within the dock. Shortly after, the *Jury* came in, and then the Court entered.⁵¹

⁵¹ The following interesting letter, published in the *Boston Daily Evening Traveller* of April, 1850, gives an account of the proceedings in the jury room. The author was Mr. Albert Day.

To the Editors of the *Traveller*:

Gentlemen: Having read in several papers what purported to be a relation of the scenes and events which transpired in the jury room, on the trial of John W. Webster, I have felt desirous (now that the subject has been brought before the public mind) that a plain statement of the more important matters connected with the jury room should be made, as it might prove interesting, if not instructive, to the community. The jury was composed of twelve men, from as many different branches of the mechanical and mercantile "professions;" they were from four different religious denominations, and their ages varied from 28 to 66 years. They were men whom I should designate as possessing good common sense;—men capable of judging, of discerning, of appreciating evidence, and estimating its importance. The jurors, after they had become better acquainted with each other, and as the evidence began to bear with crushing weight upon the prisoner, and the "complicated network of circumstances" seemed to encircle him, felt strongly the need of "that wisdom which cometh from above," to guide and direct their minds aright, in their most momentous and responsible situation.

It was then that our worthy foreman—whom we all must highly respect, and whom we shall ever remember with pleasure—proposed to the jury, that they should have religious services every evening. The proposition was most cheerfully responded to; and, ever after that time, the voice of praise and prayer ascended, as we trust, from sincere hearts to the throne of Infinite Wisdom and Mercy. I need not say that the burden of every prayer was for wisdom to guide and direct unto a right decision, and for blessings most rich and precious to descend upon the prisoner and his afflicted family.

I now come to the closing part of this momentous trial. When the witnesses for the defense had given in their testimony, and the counsel for the prisoner announced the evidence on their part closed, a feeling of pain and anguish must have come over the mind of every juror. "What! can no more be said,—no more be done in behalf of the unhappy prisoner? Is that the evidence,—the only evidence,—on which we are to place our verdict of Not Guilty?"

At that very time, with the light which the able charge of the Chief Justice afterwards gave us on several points of the law and the evidence, I think I speak the sentiments of nearly, if not quite, all the jury, when I say, that they were as fully prepared for their verdict, as they were when they retired to the jury room, after listening to the most able and eloquent pleas of the prisoner's senior

The *Clerk*. Gentlemen of the jury, have you agreed upon a verdict? We have. Who shall speak for you, gentlemen? The Foreman.

The *Clerk*. John W. Webster, hold up your right hand! Foreman, look upon the prisoner! What say you, Mr. Foreman, is John W. Webster, the prisoner at the bar, guilty, or not guilty?

The *Foreman*. *Guilty!*

The *Clerk*. Gentlemen of the jury, hearken to your verdict, as the Court have recorded it. You, upon your oaths, do say, that John W. Webster, the prisoner at the bar, is guilty: so you say, Mr. Foreman; so, gentlemen, you all say.

When the *Foreman* pronounced the word *Guilty*, the *Prisoner* started, like a person shot; his hand dropped upon the rail in front, his chin drooped upon his breast; and after remaining thus a moment or two, he sank into the chair, covering his eyes with his hands. A deathlike silence followed, and

counsel and the Attorney General; so strongly, so fully, had the evidence pointed to the prisoner as the guilty man, and to no one else. After the jury had gone to their room,—with the various evidences of guilt spread out on the table before them, and the door locked upon them, shut out, as it were, entirely from the world, with nothing but the eye of the Omniscient God upon them,—so painful was the sense of responsibility, so unwilling were they to come to the result which all felt they must come to, that thirty to forty minutes were spent ere anything was done; when, at last, the voice of the foreman was heard calling them to order, and reminding them of their duty, however painful. And, when they had all taken their seats around the table, then it was that one of the jurors rose and said, “Mr. Foreman, before entering upon the further consideration and decision of this most important matter, I would propose that we seek for divine wisdom and guidance.” The proposition met with a cordial response, and the foreman called upon a juror to offer prayer. This was done, most feelingly and sincerely. We then proceeded to the most trying and painful part of our arduous duty. The various articles which were put into the case were examined by the jury, and particularly those things which seemed to bear most strongly against the prisoner. The final decision of the question was resolved into three parts:—

First, Are the remains of a human body, found in the Medical College, on the 30th of November, 1849, those of the late Dr. George Parkman?

Second, Did Dr. George Parkman come to his death by the hands

all eyes were fixed in sadness on him whose hopes had now fled. For nearly five minutes he remained in this state, apparently unconscious, when Mr. Merrick conversed with him.

The *Prisoner* sat some time after the court adjourned, with his handkerchief to his eyes; and, at his own request, was removed to his cell, where he might be left to himself, free from the gaze of others.

THE SENTENCE.

April 1.

The Court met at a few moments after 9 o'clock. The assemblage in the room embraced some of the most distinguished persons of the state, and many from other parts of the country.

At ten minutes after 9, the *Prisoner*, in custody of two Constables, was brought into court, and took his seat in the dock.

of Dr. John W. Webster, in the Medical College, on the 23d of November, 1849?

Third, Is Dr. John W. Webster guilty, as set forth in the indictment, of the wilful murder of Dr. George Parkman?

When the vote on the first question was put, twelve hands arose immediately. Some little discussion then took place, when the second question was tested, and twelve hands at once arose. The third,—the most important question of all,—was next to be tried. Quite a pause ensued. One juror, in his sympathies of kindness for the prisoner, (who was his personal acquaintance or friend,) and his afflicted family, shrunk from the "fiery ordeal." "Can't we stop here?—can't the law be vindicated and justice satisfied, if we pause here? Must we take the life of the unhappy prisoner?" Some discussion ensued: the mind of the juror seemed more calm; and he expressed his readiness to vote on the final question, which was then put, and twelve hands arose. The die was cast, and John W. Webster was pronounced Guilty of Murder.

Thus ended the closing scene in the jury room. What afterwards transpired in the court room is already known to the public. When our foreman then pronounced that awful word—Guilty! the jury as well as the prisoner trembled and grew faint. And what a relief it was to us, when we were again allowed to go free and rejoin our families and friends, after so long and painful a separation! And there was not a juror's heart but would have leaped for joy, could the prisoner have been justly allowed the same unspeakable blessing.

ONE OF THE JURY.

Boston, April 3, 1850.

His appearance betokened extreme melancholy. He was down-cast and nervous, and appeared to be suffering from terrible emotions.

The Attorney General. May it please your Honors: The prisoner at the bar, at the January term of the Municipal Court, in this county, was indicted by the Grand Jury for the crime of wilful murder. On that indictment, according to the provisions of the law, the prisoner was arraigned, and pleaded not guilty. Counsel of his own selection, capable and faithful, were assigned to him by the Court, to assist in preparing and conducting his defense. The issue then found has been presented to a jury almost of his own selection. Every aid from counsel has been rendered, in making out his defense, that could be rendered, and that jury have found him guilty of the charge. It now becomes my painful duty to move, that the sentence which the law of this commonwealth affixes to this offense should be passed upon the prisoner.

The Clerk of the Court. John W. Webster, have you anything to say why sentence of death should not be pronounced upon you, according to law?

The *Prisoner* rose, and placing his hands upon the bar in front of the dock, looked calmly towards the Bench. He seemed as if disposed to speak; but, after a bow, again resumed his seat, without doing so.

CHIEF JUSTICE SHAW. (On the call of his name, *Professor Webster* stood up.) John W. Webster: In meeting you here for the last time, to pronounce that sentence which the law has affixed to the high and aggravated offense of which you stand convicted, it is impossible, by language, to give utterance to the deep consciousness of responsibility, to the keen sense of sadness and sympathy, with which we approach this solemn duty. Circumstances, which all who know me will duly appreciate, but which it may seem hardly fit to allude to in more detail, render the performance of this duty, on the present occasion, unspeakably painful. At all times, and under all circumstances, a feeling of indescribable solemnity attaches to the utterance of that stern voice of retributive justice which

consigns a fellow-being to an untimely and ignominious death; but when we consider all the circumstances of your past life, your various relations to society, the claims upon you by others, the hopes and expectations you have cherished, and contrast them with your present condition, and the ignominious death which awaits you, we are oppressed with grief and anguish, and nothing but a sense of imperative duty, imposed on us by the law, whose officers and ministers we are, could sustain us in pronouncing such a judgment.

Against the crime of wilful murder, of which you stand convicted—a crime at which humanity shudders, a crime everywhere and under all forms of society regarded with the deepest abhorrence—the law has denounced its severest penalty, in these few simple but solemn and impressive words.

“Every person who shall commit the crime of murder shall suffer the punishment of death for the same.”

The manifest object of this law is the protection and security of human life, the most important object of a just and paternal government. It is made the duty of this Court to declare this penalty against any one who shall have been found guilty, in due course of the administration of justice, of having violated this law. It is one of the most solemn acts of judicial power which an earthly tribunal can be called upon to exercise. It is a high and exemplary manifestation of the sovereign authority of the law, as well in its stern and inflexible severity, as in its protecting and paternal benignity. It punishes the guilty with severity, in order that the right to the enjoyment of life—the most precious of all rights—may be more effectually secured.

By the record before us, it appears that you have been indicted by the Grand Jury of this county, for the crime of murder; alleging that on the 23d November last, you made an assault on the person of Dr. George Parkman, and, by acts of violence, deprived him of life, with malice aforethought. This is alleged to have been done within the apartments of a public institution in this city, the Medical College, of which you were a professor and instructor, upon the person of a man of mature

age, well known, and of extensive connections in this community, and a benefactor of that institution. The charge of an offense so aggravated, under such circumstances, in the midst of a peaceful community, created an instantaneous outburst of surprise, alarm and terror, and was followed by a universal and intense anxiety to learn, by the results of a judicial proceeding, whether this charge was true. The day of trial came; a court was organized to conduct it; a jury almost of your own choosing was selected in the manner best calculated to insure intelligence and impartiality; counsel were appointed to assist you in conducting your defense, who have done all that learning, eloquence and skill could accomplish, in presenting your defense in its most favorable aspects; a very large number of witnesses were carefully examined; and, after a laborious trial, of unprecedented length, conducted, as we hope, with patience and fidelity, that jury have pronounced you guilty.

To this verdict, upon a careful revision of the whole proceedings, I am constrained to say, in behalf of the Court, that they can perceive no just or legal ground of exception.

Guilty! How much, under all the thrilling circumstances which cluster around the case and throng our memories in the retrospect, does this single word import! The wilful, violent and malicious destruction of the life of a fellow-man, in the peace of God and under the protection of the law—yes, of one in the midst of life, with bright hopes, warm affections, mutual attachments, strong, extensive and numerous, making life a blessing to himself and others!

We allude thus to the injury you have inflicted, not for the purpose of awakening one unnecessary pang in a heart already lacerated, but to remind you of the irreparable wrong done to the victim of your cruelty, in sheer justice to him whose voice is now hushed in death, and whose wrongs can only be vindicated by the living action of the law. If, therefore, you may, at any moment, think your case a hard one, and your punishment too severe—if one repining thought arises in your mind, or one murmuring word seeks utterance from your lips—

think, oh! think of him, instantly deprived of life by your guilty hand; then, if not lost to all sense of retributive justice, if you have any compunctious visitings of conscience, you may perhaps be ready to exclaim, in the bitter anguish of truth,—“I have sinned against Heaven and my own soul; my punishment is just; God be merciful to me, a sinner!”

God grant that your example may afford a solemn warning to all, especially to the young! May it impress deeply upon every mind the salutary lesson it is intended to teach, to guard against the indulgence of every unhallowed and vindictive passion; to resist temptation to any and every selfish, sordid, and wicked purpose; to listen to the warnings of conscience, and yield to the plain dictates of duty; and, whilst they instinctively shrink with abhorrence from the first thought of assailing the life of another, may they learn to reverence the laws of God, and of society, designed to secure protection to their own!

We forbear, for obvious considerations, from adding such words of advice as may be sometimes thought appropriate, on occasions like this. It has commonly been our province, on occasions like the present, to address the illiterate, the degraded, the outcast, whose early life has been cast among the vicious, the neglected, the abandoned; who have been blessed with no means of moral and religious culture; who have never received the benefits of cultivated society, nor enjoyed the sweet and ennobling influences of home. To such an one, a word of advice, upon an occasion so impressive, may be a word fitly spoken, and tend to good. But in a case like this, where these circumstances are all reversed, no word of ours could be more efficacious than the suggestions of your own better thoughts, to which we commend you.

But, as we approach this last sad duty of pronouncing sentence, which is indeed the voice of the law, and not our own, yet, in giving it utterance, we cannot do it with feelings of indifference, as a mere formal and official act. God forbid that we should be prevented from indulging and expressing those irrepressible feelings of interest, sympathy, and compas-

sion, which arise spontaneously in our hearts ; and we do most sincerely and cordially deplore the distressing condition into which crime has brought you ! And though we have no word of present consolation, or of earthly hope, to offer you, in this hour of your affliction, yet we devoutly commend you to the mercy of our Heavenly Father, with whom is abundance of mercy, and from whom we may all hope for pardon and peace !

And now nothing remains but the solemn duty of pronouncing the sentence which the law affixes to the crime of murder, of which you stand convicted, which sentence is [the Court and spectators rising] :

That you, John W. Webster, be removed from this place, and detained in close custody in the prison of this county, and thence taken, at such time as the executive government of this commonwealth may, by their warrant, appoint, to the place of execution, and there be hung by the neck until you are dead.

And may God, in His infinite goodness, have mercy on your soul !

The *Prisoner* sank back into his chair, and wept. He took a handkerchief, and, after wiping his face, placed his forehead upon the bar, as if to conceal the current of his tears from the thousand eyes that were turned upon him. In this position he remained until disturbed by the officers who had him in charge.

About five minutes were now passed in solemn silence, which was suddenly broken by the CHIEF JUSTICE, who said : “Mr. Sheriff, the prisoner is in your custody—Mr. Crier, adjourn the court until tomorrow morning, at 9 o’clock.” The prisoner was accordingly manacled and remanded, and the court adjourned.

THE APPEAL AND CONFESSION.

The *Prisoner* appealed to the Supreme Court on several technical questions of procedure, but on June 18th judgment

and sentence were affirmed, CHIEF JUSTICE SHAW delivering the opinion of the Court.¹

While the appeal was pending he presented a petition to the Governor and Council for a commutation of sentence, in which he said:

"I ask to be permitted to declare, in the most solemn manner, that I am entirely innocent of this awful crime; that I never entertained any other than the kindest feelings towards him; and that I never had any inducement to injure, in any way, him whom I have long numbered among my best friends.

"To Him who seeth in secret, and before whom I may ere long be called to appear, would I appeal for the truth of what I now declare as also for the truth of the solemn declaration, that I had no agency in placing the remains of a human body in or under my rooms in the Medical College in Boston, nor do I know by whom they were so placed. I am the victim of circumstances, or a foul conspiracy, or of the attempt of some individual to cause suspicion to fall upon me, influenced perhaps by the prospect of obtaining a large reward.

This was withdrawn (probably on the advice of his counsel) and on July 2nd his clergyman, Rev. George Putnam, appeared before the Council, and stated that Dr. Webster had made a confession to him, which he read to the Council, the main portions being as follows:

On Tuesday, the 20th of November, I sent the note to Dr. Parkman, which, it appears, was carried by the boy Maxwell. I handed it to Littlefield unsealed. It was to ask Dr. Parkman to call at my rooms on Friday the 23d, after my lecture. He had become of late very importunate for his pay. He had threatened me with a suit, to put an officer into my house, and to drive me from my professorship, if I did not pay him. The purport of my note was simply to ask the conference. I did not tell him in it what I could do, or what I had to say about the payment. I wished to gain, for those few days, a release from his solicitations, to which I was liable every day on occasions and in a manner very disagreeable and alarming to me, and also to avert, for so long a time at least, the fulfillment of recent threats of severe measures. I did not expect to be able to pay him when Friday should arrive. My purpose was, if he should accede to the proposed interview, to state to him my embarrassments and utter inability to pay him at present, to apologize for those things in my conduct which had offended him, to throw myself upon his mercy, to beg for further time and indulgence for the sake

¹ 5 Cush. 295; 52 Am. Dec. 711.

of my family, if not for my own, and to make as good promises to him as I could have any hope of keeping.

I did not hear from him on that day, nor the next (Wednesday); but I found that on Thursday he had been abroad in pursuit of me, though without finding me. I feared that he had forgotten the appointment, or else did not mean to wait for it. I feared he would come in upon me at my lecture hour, or while I was preparing my experiments for it. Therefore I called at his house on that morning (Friday), between 8 and 9, to remind him of my wish to see him at the college at half past 1,—my lecture closing at one. I did not stop to talk with him then; for I expected the conversation would be a long one, and I had my lecture to prepare for. It was necessary for me to save my time, and also to keep my mind free from other exciting matters. Dr. Parkman agreed to call on me, as I proposed.

He came, accordingly, between half past 1 and 2. He came in at the lecture room door. I was engaged in removing some glasses from my lecture room table into the room in the rear, called the upper laboratory. He came rapidly down the steps and followed me into the laboratory. He immediately addressed me with great energy: "Are you ready for me, sir? Have you got the money?" I replied, "No, Dr. Parkman;" and was then beginning to state my condition, and make my appeal to him. He would not listen to me, but interrupted me with much vehemence. He called me "scoundrel" and "liar," and went on heaping upon me the most bitter taunts and opprobrious epithets. While he was talking, he drew a handful of papers from his pocket, and took from among them my two notes, and also an old letter from Dr. Hosack, written many years ago, and congratulating him (Dr. P.) on his success in getting me appointed professor of chemistry. "You see," he said, "I got you into your office, and now I will get you out of it." He put back into his pocket all the papers, except the letter and the notes. I cannot tell how long the torrent of threats and invectives continued, and I can now recall to memory but a small portion of what he said. At first I kept interposing, trying to pacify him, so that I might obtain the object for which I had sought the interview. But I could not stop him, and soon my own temper was up. I forgot everything. I felt nothing but the sting of his words. I was excited to the highest degree of passion; and while he was speaking and gesticulating in the violent and menacing manner, thrusting the letter and his fist into my face, in my fury I seized whatever was the handiest,—it was a stick of wood,—and dealt him an instantaneous blow with all the force that passion could give it. I did not know, nor think nor care where I should hit him, nor how hard, nor what the effect would be. It was on the side of his head, and there was nothing to break the force of the blow. He fell instantly upon the pavement. There was no second blow. He did not move. I stooped down over him, and he seemed to be lifeless. Blood flowed from his mouth, and I got a sponge and wiped it away. I got some ammonia and applied it to his nose; but without effect. Perhaps I spent ten minutes in attempts to resuscitate him; but I found that he was ab-

solutely dead. In my horror and consternation I ran instinctively to the doors and bolted them,—the doors of the lecture room, and of the laboratory below. And then, what was I to do?

It never occurred to me to go out and declare what had been done, and obtain assistance. I saw nothing but the alternative of a successful removal and concealment of the body, on the one hand, and of infamy and destruction on the other. The first thing I did, as soon as I could do anything, was to drag the body into the private room adjoining. There I took off the clothes, and began putting them into the fire which was burning in the upper laboratory. They were all consumed there that afternoon,—with papers, pocket book, or whatever else they may have contained. I did not examine the pockets, nor remove anything except the watch. I saw that, or the chain of it, hanging out; and I took it and threw it over the bridge as I went to Cambridge.

My next move was to get the body into the sink which stands in the small private room. By setting the body partially erect against the corner, and getting up into the sink myself, I succeeded in drawing it up. There it was entirely dismembered. It was quickly done, as a work of terrible and desperate necessity. The only instrument used was the knife found by the officers in the tea chest, and which I kept for cutting corks. I made no use of the Turkish knife, as it was called at the trial. That had long been kept on my parlor mantel-piece in Cambridge, as a curious ornament. My daughters frequently cleaned it; hence the marks of oil and whiting found on it. I had lately brought it into Boston to get the silver sheath repaired.

While dismembering the body, a stream of Cochituate was running through the sink, carrying off the blood in a pipe that passed down through the lower laboratory. There must have been a leak in the pipe, for the ceiling below was stained immediately round it.

There was a fire burning in the furnace of the lower laboratory. Littlefield was mistaken in thinking there had never been a fire there. He had probably never kindled one, but I had done it myself several times. I had done it that day for the purpose of making oxygen gas. The head and viscera were put into that furnace that day, and the fuel heaped on. I did not examine at night to see to what degree they were consumed. Some of the extremities, I believe, were put in there on that day.

The pelvis and some of the limbs, perhaps all, were put under the lid of the lecture room table in what is called the well,—a deep sink lined with lead. A stream of Cochituate was turned into it, and kept running through it all Friday night. The thorax was put into a similar well in the lower laboratory, which I filled with water, and threw in a quantity of potash which I found there. This disposition of the remains was not changed till after the visit of the officers on Monday.

When the body had been thus all disposed of, I cleared away all traces of what had been done. I took up the stick with which the fatal blow had been struck. It proved to be the stump of a large grape vine, say two inches in diameter, and two feet long. It was

one of two or more pieces which I had carried in from Cambridge long before, for the purpose of showing the effect of certain chemical fluids in coloring wood, by being absorbed into the pores. The grape vine, being a very porous wood, was well suited to this purpose. Another longer stick had been used as intended, and exhibited to the students. This one had not been used. I put it into the fire.

I took up the two notes, either from the table or the floor,—I think the table,—close by where Dr. P. had fallen. I seized an old metallic pen lying on the table, dashed it across the face and through the signatures, and put them in my pocket. I do not know why I did this rather than put them into the fire; for I had not considered for a moment what effect either mode of disposing of them would have on the mortgage, or my indebtedness to Dr. P. and the other persons interested; and I had not yet given a single thought to the question as to what account I should give of the objects or results of my interview with Dr. Parkman.

I never saw the sledge hammer spoken of by Littlefield, and never knew of its existence; at least, I have no recollection of it.

I left the college to go home, as late as 6 o'clock. I collected myself as well as I could, that I might meet my family and others with composure. On Saturday I visited my rooms at the college, but made no change in the disposition of the remains, and laid no plans as to my future course.

On Saturday evening I read the notice in the Transcript respecting the disappearance. I was then deeply impressed with the necessity of immediately taking some ground as to the character of my interview with Dr. P. for I saw that it must become known that I had such an interview, as I had appointed it, first, by an unsealed note on Tuesday, and on Friday had myself called at his house in open day and ratified the arrangement, and had there been seen and probably overheard by the man-servant; and I knew not by how many persons Dr. P. might have been seen entering my rooms, or how many persons he might have told by the way where he was going. The interview would in all probability be known; and I must be ready to explain it. The question exercised me much; but on Sunday my course was taken. I would go into Boston, and be the first to declare myself the person, as yet unknown, with whom Dr. P. had made the appointment. I would take the ground, that I had invited him to the college to pay him money, and that I had paid him accordingly. I fixed upon the sum by taking the small note and adding interest, which, it appears, I cast erroneously.

If I had thought of this course earlier, I should not have deposited Pettee's check for \$90 in the Charles River Bank on Saturday, but should have suppressed it as going so far towards making up the sum which I was to profess to have paid the day before, and which Pettee knew I had by me at the hour of the interview. It had not occurred to me that I should ever show the notes cancelled in proof of the payment; if it had, I should have destroyed the large note, and let it be inferred that it was gone with the missing man; and I should only have kept the small one, which was all that I could

pretend to have paid. My single thought was concealment and safety. Everything else was incidental to that. I was in no state to consider my ulterior pecuniary interests. Money, though I needed it so much, was of no account with me in that condition of mind.

If I had designed and premeditated the homicide of Dr. P. in order to get possession of the notes and cancel my debt, I not only should not have deposited Pettée's check the next day, but I should have made some show of getting and having the money the morning before. I should have drawn my money from the bank, and taken occasion to mention to the cashier, that I had a sum to take out that day for Dr. P., and the same to Henschman, when I borrowed the \$10. I should have remarked, that I was so much short of a large sum that I was to pay to Parkman. I borrowed the money of Henschman as mere pocket money for the day.

If I had intended the homicide of Dr. P., I should not have made the appointment with him twice, and each time in so open a manner that other persons would almost certainly know of it. And I should not have invited him to my room at an hour when the college would have been full of students and others, and an hour when I was most likely to receive calls from others; for that was an hour—just after the lecture—at which persons having business with me, or in my rooms, were always directed to call.

I looked into my rooms on Sunday afternoon, but did nothing.

After the first visit of the officers, I took the pelvis and some of the limbs from the upper well, and threw them into the vault under the privy. I took the thorax from the well below, and packed it in the tea chest, as found. My own impression has been, that this was not done till after the second visit of the officers, which was on Tuesday; but Kingsley's testimony shows that it must have been done sooner. The perforation of the thorax had been made by the knife at the time of removing the viscera.

On Wednesday, I put on kindling and made a fire in the furnace below, having first poked down the ashes. Some of the limbs—I cannot remember what ones or how many—were consumed at that time. This was the last I had to do with the remains.

The tin box was designed to receive the thorax, though I had not concluded where I should finally put the box. The fish-hooks, tied up as grapples, were to be used for drawing up the parts in the vault, whenever I should determine how to dispose of them. And yet, strange enough, I had a confused double object in ordering the box and making the grapples. I had before intended to get such things to send to Fayal;—the box to hold plants and other articles which I wished to protect from salt water and the sea air,—and the hooks to be used there in obtaining coralline plants from the sea. It was this previously intended use of them that suggested and mixed itself up with the idea of the other application. I doubt, even now, to which use they would have been applied. I had not used the hooks at the time of the discovery.

The tan put into the tea chest was taken from a barrel of it that had been in the laboratory some time. The bag of tan brought in on Monday was not used, nor intended to be used. It belonged

to a quantity obtained by me a long time ago for experiments in tanning, and was sent in by the family to get it out of the way. Its being sent just at that time was accidental.

I was not aware that I had put the knife into the tea chest.

The stick found in the saucer of ink was for making coarse diagrams on cloth.

The bunch of "filed" keys had been long ago picked up by me in Fruit street, and thrown carelessly into a drawer. I never examined them, and do not know whether they would fit any of the locks of the college or not. If there were other keys fitting doors with which I had nothing to do, I suppose they must have been duplicates, or keys of former locks, left there by the mechanics or janitor. I know nothing about them, and should never be likely to notice them amongst the multitude of articles, large and small, and of all kinds, collected in my rooms. The janitor had furnished me a key to the dissecting room for the admission of medical friends visiting the college; but I had never used it.

The nitric acid on the stairs was not used to remove spots of blood, but dropped by accident.

When the officers called for me on Friday, 30th, I was in doubt whether I was under arrest, or whether a more strict search of my rooms was to be had; the latter hypothesis being hardly less appalling than the former. When I found that we went over Cragie's bridge, I thought the arrest most probable. When I found the carriage was stopping at the jail, I was sure of my fate; and before leaving the carriage, I took a dose of strychnine from my pocket and swallowed it. I had prepared it in the shape of a pill before I left my laboratory on the 23d. I thought I could not bear to survive detection. I thought it was a large dose. The state of my nervous system probably defeated its action, partially. The effects of the poison were terrible beyond description. It was in operation at the college, and before I went there; but more severely afterwards.

I wrote but one of the anonymous letters produced at the trial,—the one mailed at East Cambridge.

The "little bundle," referred to in the letter detained by the jailer, contained only a bottle of citric acid, for domestic use. I had seen it stated in a newspaper, that I had purchased a quantity of oxalic acid, which it was presumed was to be used in removing blood stains. I wished the parcel to be kept untouched, that it might be shown, if there should be occasion, what it really was that I had purchased.

On July 18th the Council reported to the Governor,⁵² refusing to recommend a commutation of the sentence and on July

⁵² BRIGGS, GEORGE NIXON. (1796-1861.) Born Adams, Mass. Member of Congress 1831-1843. Governor of Massachusetts 1844-1851. Member State Constitutional Convention 1853. Judge Common Pleas 1853-1859. Trustee of Williams College.

19th, Governor Briggs ordered the execution to take place on Friday, August 30th.

THE EXECUTION.

August 30.

The scaffold was not erected until after daylight this morning. It was placed in the center of the yard, visible from the rear of Lowell street, and the houses on the west side of Leverett street. A change had been made in its construction, a spring having been substituted to cause the falling of the drop upon which the condemned stands, instead of the cutting of a rope.

At an early hour this morning, those persons who had been furnished with passes began to assemble in the jail yard. They numbered about one hundred and fifty, of whom some fifteen or twenty were representatives of the press. The constables, police officers, and other city officers, to the number of about one hundred and twenty-five, kept order within and without the walls of the jail.

The prisoner partook of a slight breakfast, and at a quarter before eight was visited by Dr. Putnam and the jailor. The arrangements for the execution had all been explained at a previous interview. Dr. Putnam having spent an hour or more with him in religious conversation and devotional exercises, at Dr. Webster's request. Sheriff Eveleth and the officers of the jail were then sent for. When they entered, he thanked them in warm terms for their many kind attentions, and for their considerate conduct during his long confinement.

At a quarter past nine, the legal witnesses of the execution, headed by the Sheriff and his deputies, and followed by the spectators generally, then entered the archway of the jail, to the prisoner's cell, where a short but fervent prayer was offered by Rev. Dr. Putnam. He prayed for a brother now about to pass from this life of sin; to be removed from this world to another. He invoked for him the aids of the Holy Spirit, and prayed that his repentance might be accepted, and

be accounted to him as such in the sight of the Searcher of all hearts. He prayed that the humble hope of forgiveness that the prisoner had been permitted to entertain, might be realized in a blissful fruition. He also prayed for those who had been bereaved by the transgressions of the condemned man; for the ministers of the law, who, while they performed their bounden duty, did it with mercy and tenderness; that the memories and admonishments of this hour might be sanctified to all who stood before God, mortal, and soon to die. "We commit," he said, "Thy child to Thee; and while he bows himself to the law behold him an humble suppliant at the throne of Him who tempereth justice with mercy, and receiveth the contrite heart! Open the doors of Thy mansion, that he may enter! Do more and better for him than we can ask or think!"

At the conclusion of this prayer, the spectators retired from the arch. The arms of the condemned were pinioned to his side, and the procession marched to the scaffold. By the side of the condemned was his faithful religious counsellor and adviser, who had promised to accompany him, and be present at the parting scene. No sign of faltering could be observed as he ascended the steps. He appeared subdued, as one conscious of having committed a great sin, for which he was about to suffer.

As he stepped upon the drop, he looked around for his faithful friend, Dr. Putnam, who was by his side, and entered into apparently earnest conversation with him. At almost every word Dr. Webster bowed his head, as if what he was saying was emphatically the outpouring of his heart. Deputy Sheriff Coburn called the attention of the witnesses to the reading of the executive death-warrant, which was next done in an audible manner by the Sheriff,—who with his officers and the assembly, generally remained with uncovered heads during the reading, with the exception of the prisoner. At the conclusion of the reading of the warrant, Dr. Webster shook hands with Dr. Putnam, who took of him a final farewell. He was then placed in a chair to have his legs pinioned. After this was done, he again stood up. The touch of the rope upon his

neck caused his face, which had been before of a deadly pallor, to flush, and there were evident signs of a subdued but still powerful agitation. He then shook hands with the Sheriff, and spoke a few words to him.

The black cap was then placed over his face, and the light of day thus shut out from him in this world forever. The Sheriff then turned to the assembled spectators, and in a loud voice proclaimed that in the name and by the command of the Commonwealth of Massachusetts, he should now proceed to do execution upon the body of John W. Webster. At this knell of death, there was no motion of the body of the condemned, the features of the face being entirely hid from view; but he stood perfectly still, awaiting the fatal plunge.

After concluding his proclamation, the Sheriff turned around, and pressing a spring, the drop fell, and the prisoner's mortal career was at an end. This took place at twenty-five minutes before 10 o'clock. The body swayed slightly to and fro; and, in a few seconds after the fall, there was a spasmodic drawing up of the legs, once or twice. Beyond this there was no observable struggle.

After hanging thirty minutes, the body was examined by Dr. Henry G. Clark, City Physician, and by Dr. Charles H. Stedman, of the Lunatic Hospital, South Boston; and they informed the Sheriff that life was extinct.

THE TRIAL OF THOMAS HOAG FOR BIGAMY, NEW YORK CITY, 1804.

THE NARRATIVE.

It was not Thomas Hoag that was on trial for bigamy one day in the opening years of the Nineteenth Century. Yet Catherine Concklin swore that a man of that name had married her two years before in a small town in the country and that he was the same individual that was sitting in the dock before her. The prisoner denied this: said he had never seen or heard of her before and that on the Christmas day which Catherine said was their wedding day he was many miles away in the City of New York attending to his duties as a policeman; and that his name was Joseph Parker. His captain said the same thing. The records of the police office confirmed his statement and a number of his acquaintances swore that they had known him for years and that he was Joseph Parker. But Catherine's story was supported by several of her neighbors, who said that they had seen him often in her company, and that Hoag had a scar on the forehead and lisped a little. The prisoner, strange to say, had both of these peculiarities. But the witnesses further swore that Hoag had a bad scar on the sole of his foot which was very plain and which he told them was occasioned by his stepping on the upturned blade of a knife. In this state of difference of opinions the counsel on both sides agreed that they would not call any more witnesses or make any speeches, but would ask the prisoner to expose his feet to the jury. He did so: no trace of the scar was found. The jury, without leaving the box, returned a verdict of not guilty and Joseph Parker, who had entered the court room as Thomas Hoag, left it a free man.

THE TRIAL.¹

In the Court of Oyer and Terminer, New York City, June, 1804.

HON. HENRY BROCKHOLST LIVINGSTON,² *Judge.*

June 22.

Thomas Hoag was indicted for bigamy at the last term of this court, for the County of Rockland. The indictment, which was removed by consent, so that the trial should take place in this city, alleged, that Thomas Hoag, late of Haverstraw, in the County of Rockland, laborer, now of New York, cartman, on the 8th day of May, 1789, at that city, was lawfully married to Susan Faesch; and afterwards, on the 25th day of December, 1800, in the County of Rockland, his said wife being then alive, feloniously did marry Catherine Secor.

The Prisoner pleaded Not Guilty.

*Richard Riker,*³ District Attorney, for the People.

*Washington Morton,*⁴ for the Prisoner.

WITNESSES FOR THE PEOPLE.

The *Prisoner's Counsel* admitted that he was married in May, 1789, as charged, and that his wife was still living.

Benjamin Coe. Am one of the judges of the Court of Common Pleas, in the county of Rockland; am well acquainted with defendant. He came to Rockland in the beginning of September, 1800, where he passed by the name of Thomas Hoag. There was a person with him who passed for his brother; but between them there was no re-

semblance; defendant worked for me about a month, during which time he eat daily at my table, and, of course, I saw him daily; on 25th December, I married him to one Catherine Secor; am confident of the time, because on that day one of my own children was christened. During all the time he remained in Rockland county, I saw him continually, and am, therefore as much satisfied that he is Thomas Hoag as that I am Benjamin Coe.

John Knapp. Knew defend-

¹ New York City Hall Recorder. See 1 Am. St. Tr. 60.

² See 1 Am. St. Tr. 6.

³ See 1 Am. St. Tr. 361.

⁴ See page 463.

ant in 1800 and 1801. He was then in Rockland county, and passed by the name of Thomas Hoag; saw him constantly five months while he was there; was at his wedding; he had a scar under his foot; know it from this circumstance: defendant and myself were leaping together, and, upon my outleaping him, he remarked that he could not leap then so well as formerly, and before he received a wound on his foot by treading on a drawing knife. He thereupon pulled off his shoe, and showed me a scar under his foot, occasioned, as he said, by that wound. The scar is very perceptible; am confident the defendant at the bar is Thomas Hoag.

Catherine Concklin. My maiden name was Catherine Secor; am now married to one Concklin; became acquainted with defendant in September, 1800, when he came to Rockland; he passed

by the name of Thomas Hoag; saw him constantly; and shortly after our acquaintance, he paid his addresses to me, and, on 25th December, married me; he lived with me till the end of March, 1801, when he left me; did not see him again for two years; on the morning of his leaving me, he appeared desirous of communicating something of importance to me, but was dissuaded from it by the person who passed for his brother. Before Hoag left me he was a kind, attentive and affectionate husband. I am as well convinced as I can possibly be of any thing in the world, that the defendant, now here, is the person who married me by the name of Thomas Hoag; then thought him, and still think him, the handsomest man I ever saw; how often (addressing herself to defendant, and looking at his hair), have I combed those dear locks!

WITNESSES FOR THE DEFENSE.

Joseph Chadwick. I live in this city and am a rigger by trade. I have been acquainted with defendant, Joseph Parker, a number of years. He has worked in my employ as a rigger a considerable time. He began to work for me in September, 1799, and continued to work for me until the spring of 1801. During that time saw him constantly; it appears from my books that he received money from me for work performed, on the following days: 6th October, 6th and 13th December, 1800; 9th, 16th and 28th February, 11th March, 1801; he lived from May, 1800 till some time in April, 1801, in a house in this

city, belonging to Capt. Pelor; and, during that time and since, have been well acquainted with him.

Isaac Ryckman. Live in this city, and am well acquainted with Parker; have known him a number of years; in latter end of year 1800, he was jointly engaged with me in loading a vessel for Captain Tredwell of this place. We began to work 20th December, 1800, and were employed the greater part of January, 1801, in loading the vessel; during that time we worked together daily; recollect that we worked together on 25th day of December, 1800; remember it because I never worked on Christ-

mas before nor since; know that it was in the year 1800, because I know that Parker that year lived in Captain Pelor's house; remember our borrowing a screw for the purpose of packing cotton into the hold of the vessel we were loading; we borrowed the screw from Mrs. Mitchell, who lived next door to Parker's; was one of the city watch at that time, and Parker was then on the watch; from that time to the present have served with him upon the watch, and do not recollect missing him at any time during that period, from this city.

Aspinwall Cornwall. Live in Rutgers' street; have lived there a number of years; keep a grocery; knew Parker, the defendant, in 1800 and 1801, who lived in Captain Pelor's house one year, and during that time traded with me; recollect once missing him for a week, and, on inquiry, found he had been at Staten Island, at work on board one of the United States frigates. Excepting that time, never knew him to be absent from his family, and I saw him constantly.

Elizabeth Mitchell. I know Parker well. In 1800 and 1801 he lived in a house belonging to Captain Pelor, adjoining that in which I lived; was intimate in Parker's family, and visited there constantly. He was one of the city watch; used to hear him rap with his stick at the door to waken his family, upon his return from the watch in the morning; perfectly well remember his borrowing a screw from me on Christmas day, 1800; offered him some spirits to drink, but he preferred a glass of wine, which I gave him; am the more positive of the circumstance of lending

the screw to Parker, because he broke it in using it; he never lived but one year in Pelor's house, and from that time to the present, I have been on the same terms of intimacy with his family; think it impossible that he could have been absent from town any time without my knowing it; never knew him to be absent more than a week while he lived at Pelor's house.

James Reading. Have lived in this city a number of years, and have known Parker from his infancy; he was born at Roe, in Westchester county. In the year 1800 he lived in Captain Pelor's house; saw him then continually and never, during that year, knew him to be absent any length of time; particularly remember that while he lived at Pelor's house, sometime in the beginning of January, 1801, I assisted him in killing a hog.

Lewis Osborn. Have been acquainted with Parker, the defendant, for the last four years; have been one of the city watch; and from June, 1800, until May, 1801, he served on the watch with me. At first he served as a substitute, that is, one who, in case of the absence of a regular watchman, supplies his place; remember that a few days after Christmas, in 1800, he was placed on the roll of the regular watch, in the room of one Ransom; am certain as to the period, because that is the only time I ever served on the watch, and he was stationed, while on the watch with me, at the same post; am certain that the defendant is the person with whom I served on the watch; during that time he was never absent from the watch more than a week at a time.

IN REBUTTAL.

Moses Anderson. Have lived at Haverstraw, in Rockland county, since the year 1791; know defendant well; he came to my house in the beginning of September, 1800; he then passed by the name of Thomas Hoag; worked for me eight or ten days; and from that time until the 25th December following, passed almost every Sunday at my house. During his stay in our country, I saw him constantly. If he is Thomas Hoag he has a scar on his forehead, which he told me was occasioned by the kick of a horse; he had also a small mark on his neck; he had also a scar under his foot, between his heel and the ball of his foot, occasioned, as he said, by treading on a drawing knife. That scar is easy to be seen. His speech is remarkable; his voice is effeminate, and he speaks quick and lisps a little. He supped at my house the night of his marriage in December, 1800; have not seen him until this day since he left Rockland; this is between three and four years ago; am perfectly satisfied that he is Thomas Hoag.

(On examination, it appeared that he had the marks on his forehead and neck, and also the peculiarities in his speech.)

Lavinia Anderson. Corroborate the testimony of last witness, my husband, in relation to the identity of defendant, Thomas Hoag; I washed for him and there was no mark on his linen; during his stay at my husband's house, the person who passed for the defendant's brother, having cut himself severely with a scythe, complained much of the pain, when Thomas

Hoag told him he had been much worse wounded, and showed the scar under his foot; about a year ago, after a suit in which the identity of defendant's person came in question, had been brought in the justices' court in this city, I was here, and, having heard much said on the subject, was determined to see him and judge for myself. Accordingly, went to his house, but he was not at home; then went to the place where I was informed he stood with his cart, and there saw him lying in it with his head on his hand; in that situation I instantly knew him and spoke to him when he answered me and I immediately recognized his voice; it was very singular; it was shrill, thick, hurried and something of a lisp; Hoag had also a habit of shrugging up his shoulders when he spoke, and this I also observed in defendant; he then said that he had been told I was coming to see him; that it was surprising people could be so deceived, and he asked me if I thought he was the man. I said I thought he was, but would be more certain if I looked at his forehead; I then lifted up his hat and saw the scar on his forehead, which I had often seen before, and he then told me it had been occasioned by the kick of a horse; it is impossible I could be mistaken: the defendant is Thomas Hoag.

Margaret Secor. About four years ago lived in Rockland with my father, Moses Anderson; defendant, Hoag, came to our house in September, 1800, and remained in Rockland five or six months; he had a scar on his

forehead; he used to come every Saturday night to my father's, to pass Sunday with us; used to comb and tie his hair every Sunday, and thus saw the scar. About two years ago, I married, and came immediately in this city to live; after I had been here a fortnight was one day standing at our door, and heard a cartman speaking to his horse, and immediately recognized the voice to be that of Thomas Hoag. and, upon looking at him, saw defendant, and instantly knew him; as he passed me he smiled and said, "How d'ye do, cousin." Next day he came to our house and asked me how I knew he was the man? I replied that I could tell better if he would let me look at his head; accordingly, I looked and saw a scar upon his forehead, which I have often remarked on that of Hoag.

After I had seen defendant in the street, mentioned it to my husband who told defendant of it and my husband brought him to the house; am confident he is the person who passed at Rockland as Thomas Hoag.

James Secor. Have been married about two years and a half and brought my wife to town about a week after our marriage; knew Hoag in Rockland, and have repeatedly seen him there, and when I saw him at our house in town I thought him to be the same person. My wife had mentioned to me that Hoag had a remarkable scar on his forehead and when he was at my house I saw the scar which she had described, on his head.

Nicholas W. Concklin. Live in Rockland county, and know the defendant. His name is Thomas Hoag; cannot be mistaken in the person; he worked

a considerable time for me and during that time eat at my table; he was a stranger, and understanding that he was paying his addresses to Catherine Secor, I took a good deal of notice of him; thought him a clever fellow; he lived in a house belonging to me; when I saw him at this place I knew him instantly; his gait, his smile, which is very peculiar, and his very look is that of Thomas Hoag; have endeavored, but in vain, to find some difference in appearance between the defendant and Hoag. Am satisfied in my own mind that he is the same person; I think he is about twenty-five or thirty years old, and had a small scar on his neck.

Michael Burk. Live in Catherine street, and formerly lived in Haverstraw. I saw the defendant there several times before and after his marriage in December, 1800; am as well satisfied as I can be of anything that he is the same person I saw at that place; about two years ago and at the time of the Harlem races, I met him in the Bowery, when he spoke to me and said, "Am I not a relation of yours?" I replied that I did not know. He said, "I am; I married Caty Secor."

Cross-examined. Admit I had a quarrel with defendant by reason of having called him Tom Hoag; that the above conversation was after the trial in the justices' court.

Abraham Wendell. In the latter end of the year 1800, knew Thomas Hoag at Haverstraw; was intimate with him and knew him as well as any man; have worked with him, breakfasted, dined, and supped with him, and often have been at frolics

with him; defendant is the same man; have no doubt whatever about it. About a year ago was in this city and was told by some persons that Hoag had beaten the Haverstraw folks in a suit wherein his identity was in question; told them I could know with certainty, and they said they would send him down; was on board my sloop; saw him one hundred yards off, coming down street, and instantly knew him; he came up to me and said, "Mr. Wendell, I am told you will say you will know me." I replied, "So I do; you are Thomas Hoag." Am as confident he is the person as I am of my own existence.

Sarah Concklin. Live in Haverstraw. In December, 1800, a person calling himself Thomas Hoag, was intimate at my house, and called me aunt; am sure the defendant is the same person, and never can believe that two persons can look so much alike; he talks, laughs, and looks like Hoag, whom I would know among a hundred people, by his voice. The defendant must be Hoag.

Gabriel Concklin. Thomas Hoag was at my house at Haverstraw often in September, 1800; defendant must be Thomas Hoag. He had a scar on his forehead and a small scar just above his lip.

THE DEFENSE AGAIN.

James Juer. Have known Joseph Parker, the defendant, seven years, and have been intimate with him all that time; we worked together as riggers until he became a cartman; knew him when he lived at Pelor's house, and never knew him absent from the city during that time for a day, except when working on board a frigate, about a week at Staten Island; in 1799 he hurt himself on board the Adams frigate, and then went to his father's, in Westchester county, and stayed near a month. He was very ill when he left town; went with him and brought him back; he was not quite recovered; recollect perfectly of Parker and others passing Christmas eve at my house, in the year 1800, when he lived at Pelor's house.

Susannah Wendell. Have known defendant six years; he

married my daughter; when he lived in Pelor's house his wife was ill and I visited her often, and saw him there almost daily; he had never been absent from this city more than a week since his marriage, excepting the time when he went to his father's at Westchester.

Magnus Beekman. Am captain of the city watch of the second district, and am well acquainted with defendant, Joseph Parker; he has been for many years a watchman, and, as such, has constantly done his duty; upon recurring to my books where I keep a register of the watchmen, and of their times of service, I find that he was regularly upon duty as a watchman during October, November, and December, 1800, and in January and February, 1801; and, particularly he was upon duty 26th December, 1800.

It was agreed by the respective *Counsel*, that the *Prisoner* should exhibit his feet to the jury, that they might ascertain whether there was that scar which had been mentioned by several of the witnesses for the prosecution. Upon exhibiting his feet, no mark or scar could be seen upon either of them!

The *Jury*, without retiring, found a verdict of *Not Guilty*.⁴

⁴ MORTON, WASHINGTON. Married Cornelia Schuyler, daughter of General Philip Van Rensselaer Schuyler. Practiced law, New York City, 1801-1810. Died in Paris, France, May, 1910.

THE TRIAL OF HENRY B. ALLISON AND OTHERS, FOR LARCENY, RICHMOND, VIRGINIA, 1851.

THE NARRATIVE.

In the capital city of Virginia, more than half a century ago, an exhibition of Indians was held in a church and quite a crowd of people were present. After the performance an Indian girl was selling pictures, and among those looking on was James McKenzie. Now James was caution itself; he had been told to beware of pickpockets and so he had put his purse, which contained all the money he had, in his side pocket, where he could keep his hand on it, and for further protection he had taken his seat in a pew. But when a small boy called out to him, "Mister, you are taller than me, please reach up and buy me a picture," James forgot all about his treasure and thieves. He took his hand out of his pocket, took the coin from the boy and reached out and passed it up to the girl. An instant later, when he clasped his hand on his pocket, Lo! the purse had gone, and a man whom he had noticed near him was making haste to leave the church. Happily, a few days later three suspicious characters were arrested by the police. They were identified as being in the church on that evening and on one of them were found a number of bank bills, which James was able to identify as those that were in his purse. Tried for the larceny, the three were convicted, Allison receiving the heaviest sentence, as he was the moving spirit in the robbery scheme.

On the trial, the Sheriff testified that on that very morning Allison had consulted him on the advisability of his pleading guilty, whereupon his lawyer at once withdrew from the case, and left the prisoner to conduct his own defense, which he did in a short speech to the jury.

THE TRIAL.¹

*In the Circuit Court of Henrico County, Richmond, Virginia,
April, 1851.*

HON. JOHN S. CASKIE,² Judge.

April 21.

The Grand Jury had returned an indictment³ charging Henry B. Allison, Joseph Dowel and John Clare jointly with stealing and carrying away, on January 31st, 1851, a number of bank notes, the property of James M. McKenzie. There were five counts. In the first the money was described as eighteen bank notes of the value of \$160; in the second, as eighteen bank notes of the value of \$159; in the third, as three bank notes of \$20 each, amounting to \$60, and fifteen bank notes amounting to \$100; in the fourth, as one bank note of \$20, one other of \$20 and one other of \$20; in the fifth, as three bank notes of \$20 each, one of \$10, seven of \$10 each, three of \$5 each and four of \$1 each.

John B. Young, for the Commonwealth.

William W. Crump,^{3a} for the Prisoner.

The prisoners, by their counsel, announced their election to sever in their trial, and thereupon the Prosecuting Attorney elected to try Allison first.

Henry B. Allison was sent to the bar. He was a short, thick man, with remarkably broad shoulders; large eyes somewhat

¹ *Bibliography.* *Howison's Criminal Trials. See 2 Am. St. Tr. 905.

² See 2 Am. St. Tr. 906.

³ Sec. 15. "If any free person steal any bank note, check or other writing, or paper of value, or any book of accounts for, or concerning money, or goods due to be delivered, he shall be deemed guilty of larceny thereof."

^{3a} CRUMP, WILLIAM WOOD. (1819-1897.) Born Henrico Co., Va. Graduated William and Mary College, 1838, 1840 (Law). Began practice Richmond, 1840. Democrat and advocate of State Rights. Judge Circuit Court Richmond, 1851. Asst. Secretary of Treasury Confederate States. Noted criminal lawyer. Defended Jefferson Davis on charge of treason. Member, State Legislature after the war.

protruding, and a bad expression of countenance. He seemed about forty years of age.

Mr. Crump, for the defense, objected to the indictment, that it did not sufficiently describe the property alleged to be stolen. It spoke only of "bank notes"; it should have stated of what banks—whether incorporated or not, and whether of Virginia banks, or not, otherwise it could not be known that they were of any value. The sixteenth section of the act decided the question of value by "the money due on, or secured by the writing and remaining unsatisfied, or which in any event might be collected thereon."

Mr. Young insisted that the property was, according to approved precedents, sufficiently described as "bank notes," and that Section 16 did not refer to bank notes at all.

The COURT overruled the objection, deciding the indictment to be sufficient.

Mr. Crump then pleaded specially that he had not been properly examined by an Examining Court according to law.

Mr. Young produced the record of the Examining Court.

Mr. Crump demurred to the replication, on two grounds:

1. That no certificate of the Committing Magistrate appeared.
2. That one of the five Magistrates who sat in the Examining Court, had not been summoned.

Mr. Young. The warrant of the Committing Justice appears in the record. The certificate is no necessary part of it, is not the foundation of the Examining Court's authority, and need not appear. Five Justices of the city sat according to Section 4 of the act. It did not vitiate the court that a Justice sat who had not been summoned.

The COURT overruled the demurrer, deciding that the prisoner had been properly examined.

The prisoner pleaded *Not Guilty*.

The following jurors were selected: E. L. Tompkins, Thomas Jones, Balentine Winfree, James A. Scott, George Lynch, Thomas Trowers, David A. Brown, Thomas Goolsby, John Clash, Thomas Stone, John Messler, John Pae.

THE EVIDENCE FOR THE COMMONWEALTH.

James M. McKenzie. On the night of 31st January last, I went, in company with Mr. George Watt, Jr., to the African Church, to witness an exhibition of Indians. By an unusual fact, I had all my money and my papers with me in my pocket. It was a cold night; we took our places in a pew some distance from the stage, where I thought I would be safe from pickpockets. Mr. Watt had warned me to guard against pickpockets, and I took my pocket book out of my coat and put it in my pantaloons pocket, and held my hand there. After the exhibition it was announced that the Indian Girl would sell some pictures or other things at the stage. After some hesitation I went up; there was a great crowd; I still kept my hand on my pocket; I saw the man Clare, he pressed close upon me—

Mr. Crump. I object to any statements as to Clare or his conduct; no connection has been shown between him and the accused.

THE COURT. Some such connection must be shown before the evidence would be proper.

Mr. Young. Stand aside a moment, Mr. McKenzie. Mr. Handy.

Edward G. Handy. Am an officer of the police in Washington. On Saturday, 1st February, last, I received a telegraphic dispatch from Mr. Mayo (prosecuting attorney in the Hustings Court, Richmond), stating that a gentleman had been robbed, giving me some description of Allison, and asking me to en-

deavor to apprehend him. I went to the Southern steam boat on her landing, and saw the prisoner.

Mr. Crump. I object; no proof has been given of any robbery or larceny.

Mr. Young. I will go on then with Mr. McKenzie.

James M. McKenzie (recalled). I held my hand on my pocketbook, in my pocket, among the crowd; a little boy handed me a ninepence and said, Mister, you are taller than me, please reach up and buy me a picture. Perhaps the little boy knew that I felt an interest in youth, as I have long been engaged in teaching; forgot my pocketbook—took my hand out and handed up the ninepence and got the picture for the boy—when I put my hand back, my pocketbook was gone; recollected that just before I had felt some one pressing his hand between Mr. Watt and myself, and on turning round saw the man who had been pressing on me all the time, retreating and keeping his eye upon me.

Mr. Crump. Was the prisoner present; did you see him? I do not know that I did.

Mr. Crump. The witness cannot state anything said or done by Clare.

THE COURT. Unless the prisoner was present, or unless a conspiracy be proved to have existed among them at the time—the conduct and declarations of others cannot be given in evidence against the prisoner.

Mr. McKenzie. I lost \$159 or \$160; am not positive which amount, because I had had three

twenties, one ten, and either seven tens and three fives, or eight tens and one five, and either four or five one dollar notes. (A number of bank notes were shown to the witness.) I looked at my money every day for eight or ten days, and became quite familiar with its appearance; one of my twenty dollar notes had a little piece torn out of the margin, like this one; have no doubt as to this one; cannot swear so positively as to the rest, but I am so confident as to all, that if my salvation depended on it, and I were compelled to swear either way, I would not hesitate to say that these are the notes I lost.

Cross-examined. Do not recollect distinctly what occurred before the mayor; don't recollect being there asked as to the number of each denomination of notes; recollect that I have stated something of the excitement and confusion attendant on the scene at the African church; am subject to an affection of the head, which sometimes distresses me much; after it was stolen, I first saw the money again the second time I testified before the mayor; think I gave such a description as I have mentioned, to Mr. Mayo, before he telegraphed, and this was before I had seen the notes after they were stolen; my account to Mr. Mayo was, that there were three twenties and one ten in one roll, and that the majority in the other roll were tens; saw the money on Wednesday after the Friday, when I lost it; sold a colored girl for whom I think I got \$580, deposited \$500 in bank, and kept the balance; think these three twenties were part of that balance; believe Mr. Dickinson

sold the girl; this was less than a month before I lost it. As to one of these rolls, I have no more recollection of this bundle of tens as mine, than I would have of any other tens, similar in appearance; it corresponds with mine.

Edward G. Handy (recalled). Mr. Woolward went with me to the boat; prisoner came off and went in an omnibus to the Baltimore depot, about a mile from the wharf; we followed him; at the depot I stopped him and told him I wished him to come with me; he immediately did so; put him in a hack with Mr. Woolward and myself. On the way, he asked what he was arrested for; answered him that he probably knew better than we did; he asked if we could not come to some terms; answered no, he could have no terms from me; while in the hack I saw him take something out of his pocket and put it behind him; when we got to the mayor's office, Mr. Woolward got out first; I told the prisoner to get out; he hesitated but finally got out; looked behind the cushion of the hack and found a roll of money; I think \$199 in all. (The money which had been shown to Mr. McKenzie was shown to the witness.) I marked each note that I might identify them thereafter. Yes, sir, all these notes were in the roll I found.

Cross-examined. The telegraphic message said a gentleman had had his pocket picked at the African church; that two parties, supposed to be guilty, had been arrested; that another had escaped; described as a short, stout man, with head somewhat bald; think the amount was stated; did not know that

two gentlemen had been robbed, or I would have kept the rolls separate.

James F. Woolward. Am a police officer. My statement will be pretty much Mr. Handy's, with the addition that I took some \$25 or \$30 more from the prisoner, with a pocketbook. (Here the pocketbook and money were shown and identified; the pocketbook, among other papers, contained Park Benjamin's poem, "To My Mother," apparently cut from a newspaper.)

Peter Wren. Am employed at the Columbian Hotel; prisoner arrived there by the Southern cars on 28th January, and left 1st February by the Northern cars. On 19th December, 1850, he arrived at the hotel in company with Dowel, and on the 15th January, Allison, Clare and Dowel all arrived there together.

James M. Sublett. Prisoner came to the Columbian on 19th December, in company with Dowel; they paid their bills and went away. On 15th January Allison, Dowel and Clare all came together; they asked for separate rooms on each occasion, but the last time we were crowded and I put them all in the same room; they did not seem to have any business; they did not often speak to each other though I could perceive they were acquainted. On 28th January, Allison came alone and got a single room; on the 29th, Clare and Dowel came together; the last two stayed until they were arrested, 31st January. Allison left 1st February, without having given notice of his intention to leave, although we have notices put up in every room, that guests intending to leave

early in the morning, may have early breakfast by giving notice the night before.

Cross-examined. They stayed more than a week, from 15th January; we presented their bills at the end of a week and they paid them; never saw them in the street; no one came to see them or asked for them, but that was not altogether unusual; saw nothing in their conduct disorderly, or other than respectable; they did not stay much together, but sometimes in passing exchanged some words; think they all left together after the 15th January. As a general thing, passengers give notice who are going by the Northern cars. Allison seemed hurried because he had not more than fifteen or twenty minutes to get off. Each had a carpet bag; I was present when their carpet bags were opened; besides apparel, they had nothing except blacking-brushes and razors.

George Watt, Jr. Am pretty positive that I saw the prisoner at the exhibition in the African church the night of the 31st January; went with Mr. McKenzie; there was a great crowd; cautioned him to take care of his pocketbook; after the exhibition, they offered some pictures for sale, two or three of us went up to the stage; while there, there was a considerable pressure on me; I was standing against the platform and the pressure became painful; asked McKenzie "why this pressure?" Saw two men who were pressing on McKenzie, as I thought, without necessity and looking at them, I asked them to desist. They put on a sort of daring, insignificant grin, and still pressed; threw myself forward to relieve myself

from the painful posture in which I was, and succeeded; immediately afterwards I heard a sort of a scuffle, and looking round, saw McKenzie, with his arm raised, reaching out as if to seize some body—

Mr. Crump. I object to any statement as to Clare and Dowel.

Mr. Young. Mr. Watt, did you see the prisoner?

Mr. Watt. I believe I did see the prisoner that night, but I can't locate him.

George Sublett. Was at the African church that night. At the time of the pressure was about three feet from Mr. McKenzie; saw no necessity for a pressure; my arm was in a sling from a hurt, and I avoided the crowd; as I was advancing I met a man pressing towards me elbowing his way, when there was no need for it; I stood aside and made way for him. The man was not tall, not as tall as I am, but broad and stout; I was struck with his appearance, and when afterwards I saw Allison in the Mayor's Court, believed it was the same man.

Cross-examined. Am sometimes at the Columbian, but not at meal times; never saw the prisoner there; the man had not gotten out of the church before I heard Mr. McKenzie cry out he was robbed; did not see the man's face, or the color of his hair; think he had a hat on; never recognized him except by his broad shoulders; was with a lady, and when the confusion commenced she was very much alarmed and begged me to leave with her; got up on a bench and stayed about five minutes. There was much confusion, and propositions to search were made; did not see any little boys in the

aisle, nor did I see Dowel or Clare; think I first mentioned the matter to my brother that night or next morning.

Mr. Young. I think we have now in the case, evidence tending to prove a connection of the prisoner with this affair at the church.

The COURT. You can go on, sir.

McKenzie (recalled). I turned and Clare was retreating and watching me, in this way—(here the position was shown)—I reached out after him; I was so eager that my hand fell down by his head, crushing his hat, and I seized his collar; I said, "You have got my pocketbook;" he said, "I haven't;" I said, "You took it;" after a moment he said, "Search me."

Mr. Crump. These statements are not evidence; it is not pretended that Allison was then present, and they cannot be given in evidence on the ground of conspiracy, because even if any conspiracy existed, its object had been accomplished the moment of the theft and the conspiracy had ceased; the statements of one conspirator, made after the conspiracy is ended, are not evidence against another conspirator.

The COURT said Mr. McKenzie might state any facts connected with the loss and search, but not declarations of Clare or Dowel.

McKenzie. I searched him but did not find my pocketbook, and did not expect to find it; I searched both Dowel and Clare at the church and did not find any of my property upon either of them. I had on a pair of home-made pantaloons which were very spare in every-

thing, and had very shallow pockets.

George Wall, Jr., (recalled). Seeing him catch Clare, I caught hold of the other man that I had seen pressing upon Mr. McKenzie. As soon as possible I went to the cage and got Captain Jenkins and the police to arrest them. When Allison was brought back here to the jail, I went and asked the jailor to let me see him, and the moment I saw him I recognized him as a man I had seen at the church; I have a peculiar faculty for remembering faces.

Cross-examined. There were very few persons immediately around the stage; these two persons were the only ones crowd-

ing on McKenzie; no one was crowding on them; the nearest persons I saw to them were some boys. Clare had on a cloak and was in a leaning position when I saw him.

P. P. Winston. Am sheriff. This morning when I was walking round by him, Allison asked me what I thought he had better do; he said he thought they would convict him and let the others off; he said he received the money from the man whom Mr. McKenzie seized at the church; he asked me if I thought he had better plead guilty; I told him I thought as he had stood so far, he had best plead not guilty; he said he had been advised not to plead by his counsel.

Mr. Crump stated that he considered his office and his duty as ended; as the prisoner had thought proper to take his case into his own hands, he considered himself no longer bound to act as his counsel and should leave him to the jury.

Mr. Young submitted the case without argument.

The *Prisoner* addressed the jury, saying he was not concerned in the matter; that he was not at the church; that the money was handed to him by a man named Humphreys, and that he was innocent.

The *Jury* retired, and in a short time returned with a verdict of *Guilty*.

April 22.

Dowel and Clare were tried on the same indictment. Their trial was to a great extent, a repetition of the evidence above given. They were convicted.

April 25.

The *JUDGE* pronounced sentence on the three prisoners. The circumstances of Allison's case, he said had furnished one more proof how often the very fruits of crime are turned to gall and wormwood upon the lips of the criminal. Allison

had escaped with the money, while his accomplices were instantly arrested; to other's eyes and to his own, he perhaps seemed the most fortunate, yet the result had been that his prey was the means of his conviction, and so his punishment would be more severe than that of his comrades in crime. The sentence of the Court was that Dowel and Clare should be confined in the penitentiary for the term of four years, and Allison for the term of five years.

THE TRIAL OF THOMAS LAFON, JR., FOR THE KILLING OF JOSEPH HEBRING, NEWARK, NEW JERSEY, 1869.

THE NARRATIVE.

There had been a heavy fall of snow in the City of Newark, New Jersey, and on each side of a fashionable residence street, just after breakfast, men and boys were shoveling the snow from the sidewalks. A prominent house was that of Dr. Lafon, a popular physician, and his young son, Joe, a boy of fifteen, was at work at his front, varying his labors with throwing snowballs at the other boys across the street, who were similarly engaged. A butcher boy drove by in his master's wagon and in sport Joe threw some snow at him. The butcher boy resented this and called out to Joe that if he did that again he would punch his head. Joe dared him. The boy jumped down and in a moment the two youngsters were both down on the sidewalk pummelling each other in an earnest struggle, the butcher boy on top and getting the best of it, as he was bigger and stronger than his antagonist.

Standing at the window of his father's house, Tommy Lafon, an older brother, saw the fight and ran out of the house, picked up the shovel from the sidewalk, and struck the butcher boy several times. One blow fell on his head. There was a question whether he used the blade or the handle of the shovel, and whether the blow was not aimed at the back and only fell on the head because of an unexpected movement of the boy. The result, however, was the death of the boy.

It was not charged that there was any intention to kill and the indictment was for manslaughter and not murder. The Court ruled that defense of one's brother was not a justification, and that the defendant might be found guilty.

An unfortunate incident was made much of at the trial and doubtless influenced the verdict. When the bystanders picked up the senseless butcher boy and attempted to take him into the doctor's home, they were met at the front door by Mrs. Lafon, who refused to let him be brought in and told them to take him to the basement. This caused the case to take on the aspect of an issue between classes—the rich against the poor: and the workingmen of the city demanded the punishment of the rich man's son. Two of the most eminent lawyers of this state—Joseph P. Bradley, afterwards an Associate Justice of the Supreme Court of the United States, and Cortlandt Parker—were retained to defend him. And when the trial came on, the court house was packed, the front rows of seats being occupied by scores of ladies of the highest circles in society, while the rear was crowded to suffocation by the representatives of the working classes.

The jury brought in a verdict of manslaughter, for which he was sentenced to imprisonment for a year. All the evidence was to the effect that Tommy Lafon was a thoroughly good-natured young man, and that his action in striking the victim was simply an impulse of the moment. He was pardoned after a few months' imprisonment, and lived and died an honored citizen.¹

¹ 37 New Jersey L. J. 220, 286. In the summing up of counsel at the conclusion of the trial, Mr. Bradley fairly surpassed himself for his trenchant review of the testimony and his masterly eloquence. Toward the close of his address, however, he appeared to be overcome with emotion, and a thrill of excitement ran through all the front rows of spectators at his stammering words, as he appealed to the jury not to inflict upon this young defendant their con— He could go no further, but dropped helplessly into his chair, and dropped his face upon his arms outspread upon the table. It was an exciting scene. Nobody appreciated it better than his associate counsel, Mr. Parker, but Mr. Parker attributed the thrilling emotion to a different cause from that of the other spectators, and he watched Mr. Bradley with a mixture of whimsicality and curiosity. His expectations were finally fulfilled, as Bradley raised his head and muttered, half to himself and half to Parker: "Condemnation—that's the — word I wanted!"—*Reminiscences of William Nelson*.

THOMAS LAFON, JR.

THE TRIAL.²

*In the Court of Oyer and Terminer of Essex County,
(Newark), New Jersey, February, 1869.*

HON. DAVID A. DEPUE,³
HON. WILLIAM B. GUILD,⁴ } Judges.

February 8.

The indictment which had been previously found by the Grand Jury of the county charged that, Thomas Lafon, Jr., did on the 5th day of December, 1868, in the City of Newark, inflict certain wounds on the head of one Joseph Hebring, from the effects of which he died on the 11th day of December. The *Prisoner* pleaded *Not Guilty*.

C. S. Titsworth,⁵ Prosecutor of the Pleas, for the State.

² *Bibliography.* *"Trial of Thomas Lafon, Jr., for Manslaughter, in the Essex Oyer and Terminer, February 8th to 11th, 1869. Evidence printed from the notes of Samuel Johnson, the Court Stenographer. Newark, N. J.: Daily Journal Steam Print. 1869."

³ DEPUE, DAVID AYRES. (1826-1902.) Born Mt. Bethel, Pa. Graduated Princeton, 1846. Studied law with John Maxwell Sherrerd, Belvidere, N. J., and admitted to New Jersey Bar, 1849. Practiced law at Belvidere. An Associate Justice of the Supreme Court of New Jersey, 1866-1900. Chief Justice of New Jersey, 1900. His knowledge of the law was profound, and he was seldom overruled. In purity of life and strength of character he made a lasting impress on the Bar and Bench of the State.

⁴ GUILD, WILLIAM B. (1806-1888.) Born Clinton, N. J. In early life was miller and merchant at Hackettstown, N. J.; then (1836) opened dry goods store in Newark. Sometime in the '60's he became manager of the *Evening Journal* of Newark, and later sole proprietor. Under his management it became the strongest democratic newspaper in New Jersey. About 1868 he was appointed Lay Judge of the Essex Common Pleas, and held the office two terms.

⁵ TITSWORTH, CALEB S. (1826-1886.) Born Metuchen, N. J. Graduated Union College, 1850. Read law with John T. Nixon, U. S. District Court Judge, New Jersey, and Chancellor Theodore Runyon, and was admitted to practice, 1855. Prosecutor of the Pleas of Essex County, N. J., 1867; Presiding Judge of Essex Common Pleas, 1874-1879. A man of great ability, and one of the first members of the republican party in New Jersey.

T. P. Ranney,⁶ *Cortlandt Parker*⁷ and *Joseph P. Bradley*,⁸ for the Prisoner.

The jury having been impanelled and sworn, *Mr. Titsworth* opened the case, narrating the evidence that the witnesses to be called were expected to give.

THE WITNESSES FOR THE STATE.

Agatha Hebring. Live No. 112 South Orange avenue, Newark; my husband is Stephen Hebring; my son, Joseph Hebring, died on 11th December last; he was brought home on Saturday morning (5th), between 10 and 11, by Dr. Dougherty and Mr. Lafon, the defendant; the doctor on one side and Mr. Lafon on the other side of him; the doctor knocked at the door; I opened it and the

⁶ RANNEY, TIMOTHY P. (1829-1874.) Born Granville, Mass. Graduated Amherst, 1851. Studied law in Newark, N. J. Was admitted to the New Jersey Bar, 1854, and practiced at Newark until his death. For a time a partner of Joseph P. Bradley. A lawyer of marked ability.

⁷ PARKER, CORTLANDT. (1818-1907.) Born Perth Amboy, N. J. Graduated Rutgers's College, 1836. Studied law with Theodore Frelinghuysen and Amzi Armstrong, at Newark, N. J. Became the most eminent lawyer of New Jersey in his day, and was one of the active founders of the republican party in the State. Prosecutor of the Pleas of Essex County, 1857-1867. President Grant requested him to act as one of the judges in settling the Alabama claims; President Hayes offered him the ministry to Russia and President Arthur that to Austria, but he declined all these and similar honors, in order to remain at the Bar. In 1876, at the Presidential election, he accepted the duty of being witness to the counting of ballots in Louisiana. He was President of the American Bar Association, 1883, and received the degree of LL. D. from Rutgers's College and Princeton University, in the same year. As an orator and writer he was equally as prominent as at the Bar.

⁸ BRADLEY, JOSEPH PHILO. (1813-1892.) Born Berne, N. Y. Graduated Rutgers's College, 1836, pursuing his studies while conducting an academy at Millstone, N. J. Studied law with Archer Gifford, of Newark, N. J., and was admitted to practice, 1839. Practiced at Newark, and soon became counsel for the old Camden & Amboy Railroad. Associate Justice Supreme Court of the United States, 1870-1892. Was a member of the electoral commission of 1877 which seated President Hayes over Samuel J. Tilden. In legal learning he had few equals, and the extent of his knowledge in literature, science, art, history, antiquity and Biblical learning appeared to be as extensive as his knowledge of the law. He married the daughter of Chief Justice Joseph C. Hornblower, of New Jersey. (See 1 Am. St. Tr. 725.)

doctor says, is this your boy? I said yes; asked him what was the matter; he did not make an answer right away; he said there had been a little scuffle. "Have the bed made and put him to bed as soon as possible, and have bricks put to his feet, he was very cold." Did everything the doctor told me; he remained about half an hour, till I got hot irons; the doctor put them to his feet himself; when we was in the kitchen Thomas Lafon asked how many children I had; that was all he said; me and my daughter—my oldest—attended my son; from the time I put him in bed, at 11, till 1, he never opened his eyes nor spoke; about 1 his feet was warm and he opened his eyes; I said to him, what have you been doing? During the night he wanted to drink; said his head was dreadful sore; he was not able to sit up; he could not help himself more than a tiny baby; he was conscieous all the time till 9 o'clock on the morning he died; he was eighteen years and nine months old when he died; my husband was not in when they brought my son home; no one but myself and my little children; my husband is a saddle maker and works for George Peters; my son was working for Mr. Bathgate, the butcher, since about a year. He was a strong hearty boy before this occurrence; never sick at all.

Dr. Alexander N. Dougherty. Was called to see the lad, Hebring, about 10 a. m., of 5th December, in the market house in Mr. Bathgate's room, lying down upon a lounge; his condition was very feeble, with blood running from his left ear; there was a mark of a bruise about two inches above the ear on the left

side of the head; thought he was very seriously hurt, and wanted him taken to his house. Lafon came with a carriage, and we took him home. He was very unsteady; had vertigo and could not stand; Dr. Bromley and myself treated him; the cause of his death was inflammation of the membranes of the brain, the result of fracture of the skull; there was a post mortem examination by Dr. Lehlbach; I assisted; so did Dr. Bromley; it was held the day after his death; the skull was fractured; I produce a skull. The fracture went through the solid part of the temple bone; he spoke and continued to be sensible until the day before he died; was conscieous all the time till then; prisoner went with me to the house; he said to me: "I know you will think it is a beastly thing—or brutal thing to do; I saw him on my little brother and I went to get him off." Am not positive whether he said he used this shovel or not; Thomas Lafon and I stayed at Hebring's house about an hour to get the boy in bed and warm; did not hear Thomas Lafon say anything to the family; he came back with me; Hebring's mother asked what was the matter; I put her off; said he had met with an accident.

Cross-examined. When Thomas made the remark to me he might have said something expressing surprise that any particular injury had been done, but I don't remember distinctly; he appeared very sorry for the result and apprehensive; gave him to understand the injury was serious; don't recollect that he said to me that he had no idea of doing the boy any hurt; Thomas

Lafon did all he could to aid me; we carried him in a carriage; a covered wagon; a sort of cab hired for the occasion; one-horse; young Hebring was sitting up; I supported him on the seat with me; under the place where I found the bruise the bone was fractured; the skull where the fracture began is a thin portion of the skull; there is no thinner part of the skull than that point where the two pieces of the head join; deceased's skull at that particular point was thinner than the skull there generally is; there was a bruise there; no cut; a blunt instrument in my judgment caused the bruise. Don't remember seeing any other injury outside, though he complained of injury to his arm.

Dr. Chas. F. J. Lehlbach. Am the County Physician; I held the post mortem examination on the body of Joseph Hebring; Dr. Dougherty and Dr. Bromley assisted me; the cause of his death was inflammation of the brain, resulting from fracture of the skull; at the temple bone; it ran from near the junction of the temple and parietal bone right down, and then through the membranes of the ear; we looked for external bruises on the body but did not find any; our first examination was at the head; when we became satisfied that was the cause of the death, we did not particularly look further; think we opened the chest; there could be no hope of recovery, I think, under such a fracture of the skull.

Cross-examined. The fracture began at the junction of the parietal and temple bone; the outer plate of the temple bone was splintered off; thought I could see some abrasion; the ab-

sence of any external abrasion would indicate that the blow was struck with a dull instrument. The thickness of the skull was a little below the average of persons of that age; up to a certain age they increase a little in thickness, but not much after twenty-one years; they increase not so much in thickness, but in firmness—in strength.

Sarah W. Crowell. Live at No. 9 Cedar street; my house is very nearly opposite Dr. Lafon's house; on the morning of 5th December was on my stoop; saw only part of the occurrence between Thomas Lafon and the Hebring boy; had been to market and had just returned; saw no part of it until I got to my stoop; first saw Thomas Lafon striking the boy Hebring with a shovel; think it was a coal shovel or a snow shovel; a shovel like that now produced; seemed to me that it was the iron part of the shovel that he struck Hebring with; he appeared to hold the shovel with both hands; saw him strike him three times; it was near the head where he struck him; the blows were in quick succession; as to force, they seemed hard; their effect upon Hebring was, he groaned very much; did not see Thomas Lafon get the shovel; when he had struck the three blows he went up his father's steps; don't know what he did with the shovel; when he struck the blows he was standing near the boy; the boy was lying on the walk—near the area gate; his head was by the gate and his feet towards the curb; when Thomas Lafon left, after giving the blows, the boy attempted to rise, but was not able; he staggered and sunk again; he tried a second time to

rise and sank again; he was groaning considerably—put his hand up to his head and made a considerable noise; saw no blood, from my stoop; I went into one of my neighbors, Mrs. Matthews, on the opposite side of the street, next door to Dr. Lafon's; the Hebring boy, when I crossed, was still on the walk; saw Stickles, the boy who was shoveling my walk, take hold of him to help him into Dr. Lafon's; there was another person helping him, but who it was I don't know; they took Hebring as far as Dr. Lafon's stoop; then I went into the next door; was not but a few minutes between the time of Thomas Lafon leaving the boy, after striking him, and the taking of him by the two men to Dr. Lafon's stoop; it seemed very quick, the whole of it; did not see the boy after he was taken to Dr. Lafon's stoop; saw no blood upon the sidewalk; I stood upon my stoop during the occurrence and went across the street afterward; told the boy that was cleaning my sidewalk to go over and help him; Thomas Lafon was then in his father's house; the boy called for Mr. Bathgate; Thomas Lafon did not say anything; did not hear a word from him.

Cross-examined. Had just come from the market; the first thing I saw was the shovel in the air; use spectacles for sewing and reading the newspapers, but never in the street; am not what is called a near-sighted person; the blows seemed quick; the whole transaction was very quick; do not feel as if I could be at all sure how the spade was held; think the iron part was used; cannot say what part of the shovel struck the boy; it

seemed to be sidewise that Thomas Lafon was standing, with respect to me; they were very close together; did not notice any one lying on the sidewalk but this boy.

Julia Woodruff. Live No. 17 Cedar street; my husband is John C. Woodruff; on morning of 5th December was in front of my house when the groans of the boy first attracted my attention; next saw the boy lying on the walk; saw him attempt to rise, but unable to do so; when I first saw Hebring he was lying on the walk in front of the area gate, before Dr. Lafon's house; saw the last blow given; it was on the head; before I heard the groans; saw the boy raise his head; think it would have been given on the back if he had not raised his head and turned it; after the blow was given saw Thomas Lafon take the shovel from the walk and enter the house; think he struck the Hebring boy with the blade part of the shovel; don't know how he held the shovel—whether with one or both hands; the left side of the head was struck, above the ear; after Thomas Lafon went into the house saw the boy lay there on the walk five minutes; he appeared to be suffering; groaned and called for help; saw the younger Lafon on the sidewalk while Hebring lay there; did not see him before the blow was struck; Thomas' back was towards me; he stood on the left side of Hebring; it was Thomas Lafon gave the blow; after the blow saw the blood streaming from the boy's ear; stood on the sidewalk a moment, until I saw him taken into the house, and then went back to my house; thought I might assist

him in getting up, but found he was larger than I thought, and I could not; two others came to assist him and took him into Dr. Lafon's house; up the front stoop; they did not get in there; he was brought down again and taken into the basement; he was brought out again in about ten minutes by Dr. Dennis and Thomas Lafon—they put him on the wagon that had been sent from the market.

Cross-examined. Don't remember seeing Joseph Lafon lying on the sidewalk at all; the first I remember was the last blow given; saw the shovel hit the head; afterwards Thomas Lafon seemed very much excited and pale.

Re-examined. Saw Thomas Lafon after he had thrown the shovel down and went into the house and returned; noticed he seemed excited; saw Joseph Lafon standing on the walk; he had picked up the shovel and attempted to throw the snow from the walk; the same shovel that Thomas Lafon had used; the shovel produced is like the one used. A boy who had been shoveling snow from the sidewalk in the street, and another person I don't know, took the Hebring boy into the house.

Maria McCormick. Live 140 Washington street; was coming through Cedar street on morning of 5th December, about half past 9, on the same side as Dr. Lafon's house; as I turned Halsey street, the butcher boy sat on the wagon, and angry words were passed between him and the doctor's boy; did not hear what the doctor's boy had said; the butcher boy made use of an oath, and said, I will show you; jumped out of the wagon, came

on the sidewalk and ran down to the doctor's boy who stood two or three steps in the street; as soon as they came together they gave about blow for blow till they fell across the sidewalk with their feet in the gutter; the butcher boy came on top of the doctor's boy and commenced to pound him; did not see the doctor's boy use either hand or feet; the elder boy then rushed out of the house with slippers on and bare headed; ran across the walk, picked up the shovel and struck him two blows in the back; the butcher boy then turned his head to the left and raised partly up; the third blow struck him on the left side of the head; after he struck the last blow, he dropped the shovel immediately, and turned to go up his father's stoop; noticed him looking very pale; saw the blood come from the ear of the butcher boy and heard his groans; was very near when the blows were given; don't think I was six feet from them when the last blow was struck; some part of the sidewalk was cleaned and some was not; don't know whether it was snowing then; Thomas Lafon was standing with his back towards me when the blows were struck; did not see his face only when he came out of the house; when he struck the butcher boy he stood with his face towards Broad street; did not see Joseph Lafon; the butcher boy seemed to have complete power over him; saw Thomas Lafon on the stoop and Hebring lying on the sidewalk, and Joseph Lafon at the side of him; both their caps fell off, and they were two or three steps in the street when Joseph Lafon and the butcher boy exchanged

blow for blow; did not hear a word between Thomas and the boy; there was words between the butcher boy and Joseph; did not hear what Joseph said; Hebring made use of an oath and said I will show you; think he said damn you; don't know what they had been doing before that; I think Joseph Lafon had been shoveling snow from the gutter; all three blows seemed to be quite hard; Thomas Lafon struck him with the handle—the end that has got the hole in; it was a shovel like the one produced; he took hold of the shovel with both hands and struck with the flat part of the handle.

Cross-examined. I saw all three blows; did not notice the first blow occasioned any change in the butcher's position; when the second blow was given he still continued to pound the doctor's boy; the butcher boy turned around and raised himself up partially, but did not raise up on his feet; his object seemed to be to see who was striking him; this action brought him into the way of the third blow; changed his position and brought the blow on his head; the boy Hebring was about the size of the doctor's eldest boy, except stouter; a well knit, strong young man; stronger than the doctor's young boy. When they fell Joseph Lafon was on his back and underneath; think Joseph's hands were held by the butcher boy; the sidewalk and gutter were wet; think it was snowing a little while. My husband is a grocer; the butcher boy turned his head towards me to see who was striking him; the blows were given as quick as one blow could follow another.

Hannah Searing. Live at No.

11 Cedar street; my house is next to Mr. Crowell's; our stoops adjoin; saw part of the occurrence from the second story front window; the first thing I saw was the Hebring boy and Joseph Lafon struggling together near the curbstone; the Hebring boy seemed to be trying to throw Joseph, and Joseph to be trying to get away; saw no blows; they had hold of each other; the Hebring boy seemed to have his arms round Joe; don't know whether Joe had his arms round the butcher boy; the Hebring boy succeeded in throwing Joe on the sidewalk; on his back, and the boy was on the top of him, and pounding him about the head and neck; Thomas came to the window and looked out and saw them, and instantly came out and took up the shovel on his way to the boys and struck the blows; saw him strike three blows; don't think the blows hurt him enough to do him harm, if one of them had not struck him on the head; they were not very hard blows; though in quick succession; think the Hebring boy was struck with the blade, but will not be positive; saw the shovel raised three times in the air; the window I looked through was closed; heard the boy scream after the blows; when Thomas has struck the blows with the shovel he went into the house, throwing the shovel down; saw blood coming from the Hebring boy's ear; they carried him up the stoop of Dr. Lafon's, perhaps a step or two, and then carried him into basement; a boy that was shoveling snow helped him; think Thomas Lafon helped him, but cannot say; Hebring boy made two or three efforts to

get up, but fell back; he was in the basement ten or fifteen minutes; Thomas Lafon and Dr. Dennis helped him in the wagon.

Cross-examined. Think I saw Thomas at the window before he came out, but may be mistaken; had never seen him before; did not notice he was bare headed; the two first strokes fell on the back; there was a change in the position of the Hebring boy between the second and third stroke; he raised and changed the position of his head; seemed to put his head in the way of the shovel; that raising of the Hebring boy seemed to be the first notice he had taken of any one interfering; did not go out myself to help them; did not think the boy was hurt; as I went on looking saw him make attempts to rise and he fell back; thought he was pretending a little; saw the blood coming from his ear; did not know but what it might be a little cut.

Charlotte Condit. My father's name is C. Harrison Condit; am thirteen years old; our house is the last house in Cedar street, on the same side as Dr. Lafon's; was in the street on the morning of this occurrence, in front of the stoop, next to Dr. Lafon's, in front of Mrs. Matthews'; saw Joseph Lafon shoveling snow off the walk; there were several boys shoveling snow; saw the Hebring boy coming on the wagon from Broad street; as the boy was passing Joseph was throwing snow from the gutter, and threw a shovelfull against the side of the wagon, and there were some words; don't know what they were; the Hebring boy dared him to do it again; challenged him to throw snow against the side of the wagon,

and Joseph said very well; do not recollect what more was said; the Hebring boy swore at him when Joseph threw the snow on the wagon; don't know what he said; Hebring dared him to throw more snow on the wagon, or to do it again; Joseph said he would dare to do it again; he did dare to do it again; the boy jumped off the wagon and ran back to the place where Joseph was standing; don't remember hearing any words, but they commenced to strike each other with their fists and clenched and rolled over on to the sidewalk; the Hebring boy struck Joseph about the head and shoulders; don't know that Joe did; did not see him use his hands at all after he was down; saw Thomas Lafon in the window, and when he saw the two boys rolling on the sidewalk; saw him come down the steps; he picked up the shovel and struck the boy two blows on the back; then as he was lifting himself up, Thomas struck him another blow, which hit his head; the boy was on his knees on the sidewalk when the first two blows were struck; when the last blow was given, it seemed to me he was looking up to see who was striking him; the blows appeared to be heavy blows; could not tell which part of the shovel he struck him with or which end; the blows came in quick succession; after he struck the blows he went up on the steps of his father's house; Joseph Lafon got up and stood there; don't remember his doing anything but that; Joseph Hebring lay on the sidewalk, put his left hand up to his head and groaned, and then laid his head

down on the sidewalk; did not see him make an effort to get up; he groaned; did not see the blood coming out of his ear; saw the blood on the sidewalk afterwards; had been playing with Joseph in the snow, on the sidewalk; Thomas was at the window a few minutes before Joseph and the boy commenced to strike each other, and was at the window as they fell over on the sidewalk; don't know whether he was at the window when Joseph threw the snow, but think he was.

Cross-examined. It was a white covered wagon, such as is usually driven by butchers; did not see Hebring's boy until he got off the wagon.

Dr. Laban Dennis. Live next door to Dr. Lafon's; am connected in business with Dr. Lafon; was in my boarding house at the time of the occurrence spoken of; in the second story front; saw Joseph Lafon struggling with some boy in the street; both were standing and scuffling; thought it was a little boy's quarrel—I turned away and saw nothing more of the blows struck; next saw the head and shoulders of Thomas Lafon as he was apparently standing near the edge of the curb; saw the handle of the shovel come over three times in the air; did not see where the blows struck; the object aimed at was hid from my view; the blows came from the right shoulder of Thomas Lafon; this part of the shovel impressed itself on my mind—the handle end; did not hear the blows; heard the cry of the Hebring boy and saw him standing on the sidewalk and bleeding; hastened down as it seemed worse than I had thought; sup-

posed Thomas was striking the Hebring boy on the back; from the character of the instrument, and my previous knowledge of the boy; found he was carried down into the basement to ascertain the nature of his injuries; Dr. Lafon was not at home; Joseph Hebring was sitting in a chair in the basement; I examined him; discovered no wound; was told blood had come from the ear; he was conscious and answered my questions as to where he lived, and seemed to be merely suffering from the pain—he moaned; from that circumstance alone—blood coming from the ear—thought it was serious, but from his consciousness did not think it was great; he made attempts to vomit; in a few minutes Bathgate's man came in and I told him to bring a wagon immediately and take him home; went to prepare medicine for him and while doing this the boy had been taken out, and was sitting in the wagon leaning slightly forward, between the man and Thomas Lafon; did not help him into the wagon; saw him at his house afterwards, but not again that morning.

Cross-examined. The street there is very narrow; not more than 30 feet; was on the same side of the street that the occurrence happened on; unless I put my head out of the window could not see it all; did not stand close to the window, because it did not impress me; saw Thomas Lafon's head and shoulders; he was in the basement when I got down—a dining room, six steps below the street to the level of the basement floor; would be the least effort for the Hebring boy to go

down than up; he was sitting in a chair in the basement; Mrs. Lafon, Thomas Lafon, Joseph, a servant girl or two, were down there; completing that operation of washing his face; did not hear any suggestion of Hebring going to Mr. Bathgate's; suggested the getting of the wagon; Bathgate's man had come in; went to prepare medicine; when I got to the basement they were in the wagon in the front street. The steps down into the basement are rather narrow; three men could not conveniently walk side by side to the basement; the steps to the front door are wider; saw Thomas Lafon in the presence of Hebring immediately after the occurrence; my impression is Thomas said "here's a boy badly hurt."

Chilian Stickles. Shall be twenty-one next March; was in Cedar street on 5th December; was cleaning the pavement next house to Dr. Lafon's; saw the youngest Lafon fire snowballs at Hebring, or snow—don't know whether it was made into a snowball or not, in the opening of the wagon; Hebring told him to stop or he would make him; young Lafon said he could not do it, and fired again and struck the horse on the hip; when he had struck the horse Hebring drove to the corner of Halsey street and came back again and asked Lafon what he meant by firing snowballs when he told him to stop; he gave him an answer not very proper—he said it was none of his d—d business; they clinched round the neck and tried to throw one another, and slipped and Lafon fell under; Hebring did not trip him; Hebring commenced to punch him on the shoulder; young La-

fon asked him to let him up; Hebring asked him if he would fire any more snowballs; he said he would; after punching him once or twice more in the shoulder, and as he was getting up, the elder Lafon ran off his father's stoop and picked up the shovel from the side of the boys; I saw one blow and he fell from the effects of the blow; then I went across the street to Mrs. Woodruff's—her house is on the other side, and told her I would be over in a little while to clean the walk; they asked what was going on, I said they had been fighting, and they asked me why I did not go over and pick the boy up; went across and helped to pick him up; some one helped me; don't know who it was; took him up to the front stoop; Mrs. Lafon told me not to fetch him up there—she did not want the blood; we brought him to the basement steps and took him down, and young Lafon and a servant girl took him in; went across the street again and went on shoveling; when the butcher boy was struck by Thomas Lafon, could not exactly tell the distance I was standing from them; saw one blow certainly, and the butcher boy fell; the blow hit him on the head, on the left side; it seemed to be a hard blow; saw the blood on the side of his face; he made several efforts to get up and was not able to; after Thomas Lafon struck him he went into the house directly; after striking the boy, did not hear him say anything; he went up on the stoop immediately and disappeared; don't know how long Hebring stayed on the sidewalk before we took him into the basement; time enough to go to the market

and back; had seen the butcher boy at Bathgate's stand; had no other acquaintance with him; he was about the same size as Joseph Lafon, perhaps an inch smaller or taller; not much stouter.

Cross-examined. Am a house painter; when I can get it; have had no work steady this winter; have been to Trenton on the Camden and Amboy road; before that took a job wherever I could get it; have been employed by livery men; was shoveling snow; I lay my hand to what I can lay it to; was sworn before the coroner's jury; the butcher boy had his head over young Lafon and was straightening himself up when he was struck; the thing at first did not much attract my attention; could not help but hear them, and did not look to see them; after the butcher boy asked him what he meant he clinched him; the butcher boy did not strike young Lafon before he asked him. Before the coroner, I said, that the butcher boy drove up to the corner of Cedar and Halsey and stopped, and then got out of the wagon and came to young Lafon and asked him what he meant, and he told him it was none of his d—d business, and that the butcher boy drew off and struck him on the shoulder; did not say he struck him at the side of the head; can write my name; cannot read well; after they clinched the butcher boy gave blows; did not see young Lafon give blows; his hands were free to do it; young Lafon was under when they fell; Hebring was on the top, breast for breast; immediately after they fell he raised himself—he was partly supporting himself by his hands,

and with his right hand he was punching Lafon; saw Hebring give three or four blows with his fist; saw Thomas Lafon come from the stoop; the butcher boy was just getting up—he had stopped striking him entirely; the butcher boy was very nearly erect when the blow struck him; cannot say which end of the shovel struck the butcher boy, whether the iron or wooden part of the shovel.

Robert Wm. Talmadge. Am in the employ of M. M. Osborn, confectioner; was in Cedar street on the morning of 5th December; had a team with me; driving it; first saw Dr. Lafon's son cleaning the sidewalk; Hebring called out to me and I called out to him to give room; just this side of Dentist Colburn's; passed him before he got to Dr. Lafon's; Colburn's house is the first house; after I passed Hebring's wagon, a loud talk attracted my attention; between Dr. Lafon's son and Hebring; did not hear what was said; as I looked back saw Dr. Lafon's son strike Hebring; they were a couple of feet from the street; saw the butcher boy strike young Lafon and Lafon struck with the shovel and got on the sidewalk; they clinched and the butcher boy, being larger and heavier got him down and pounded him with his fist; saw Dr. Lafon's eldest son come out and pick up the shovel and hit the butcher boy on the back; the young man raised up and the blow came on the side of the head; don't suppose it would have hit him on the head if he had not raised up; took the first blow to be quite light; the second blow was quite heavy; Hebring boy appeared to be hurt; did not hardly think it

was my place to stop or have anything to do with it; did not turn around to see what happened after Lafon struck the second blow; did not hear a word said by Lafon; drove on out of the street.

Cross-examined. Hebring was punching young Lafon when the elder Lafon came out; Hebring had all the advantage, was striking very heavy, hitting him quite fast—the ordinary way of striking when men are fighting; he did not give him any chance, he wanted all the chance himself; striking at young Lafon's face; think if the Hebring boy had not changed his position, the blow from the elder Lafon would not have hit him on the head. Hebring was on his knees, and the boy was under him, and he was turning his head up to see who was striking him; he was hugging young Lafon pretty close; Hebring did not lift his body, only turned his head. He could turn without raising himself.

James E. Bathgate, Jr. Am a butcher in the Centre Market; Joseph Hebring had been in my employ about a year at the time of his death; delivering meat; on the morning he was injured he had gone out with a load of meat; with my horse and wagon; heard before he was brought to the market that he was hurt in Cedar street; sent a man to find out—George Burgesser, who is still in my employ; he came back with the Hebring boy; Thomas Lafon came with him; they came in the side door; one on each side of him, holding him by the arm; they said they had brought him in the wagon; he was laid on the lounge in the office; Thomas Lafon said he had hit him—he had done it; he said

I would hardly think it, or something to that effect; he wanted me to let him have the wagon to take him home; said he would fix it right with me; I said he could not fix such a thing as that with me; I wanted him to take him back to his house and leave him there till he could be properly cared for; he would not do it, but insisted upon taking him home, to Hebring's house; he wanted to take the butcher wagon, and I would not let him; told him to take his father's carriage; he said his father had it out; he then wanted to take him home in the butcher wagon, and I told him to get a carriage; he went after it, and I immediately sent for Dr. Bromley; could not find him, and I sent for Dr. Dougherty; Dr. Dougherty got there before Thomas Lafon got there with the carriage; Dr. Dougherty said he was seriously hurt; blood ran out of his ear, a little; Thomas said Dr. Dennis had seen him and washed his ear and had got medicine for him; he had a little vial, and took it out of his pocket; Thomas said he hit him with a shovel; did not say much to Thomas Lafon, but Mr. Johnson, in the shop, scolded him, and Thomas said he was responsible for it—he had done it; Hebring complained of cold feet, and said he was sick at his stomach; Thomas Lafon and Dr. Dougherty got into the wagon and took Hebring away; they brought him to the market about 10 o'clock; he was probably twenty minutes in my office; Hebring had been gone out of my place three-quarters of an hour before he was brought back this way.

Cross-examined. When he said he was responsible, he had done

it, he said he felt as badly as anybody; the wagon of mine was a spring, covered wagon; think it had straw in it; it had no cushion; do not think he could have been carried well in the bottom of the wagon; Thomas Lafon got a carriage better than the wagon; don't think the boy spoke about going home; he said very little; he sat up part of the time while he was in my office, with his arms laying on the back of the chair; if I said before the coroner's jury that Lafon said he hit him with a shovel; that Hebring was on top of his brother, he saw him through the window; he thought he was a larger person, and he then went out of the house and hit him with a shovel, it is true.

Re-examined. Hebring was a little larger than Joseph Lafon; not quite so large as Thomas; some one spoke of arresting Thomas when he got out of the wagon, and he said he did not know but he would go to the police station himself.

James Allen. Live with my mother; was in Cedar street the morning of 5th December; I was shoveling next door to Dr. Lafon's; saw Joseph Hebring come along with his wagon; saw the butcher boy jump out of the wagon and go to young Lafon and punch him right over the left shoulder; saw nothing before that, as he passed along with his wagon; did not see the difficulty about the snow; when Hebring got out of the wagon and went towards Lafon, he said nothing to Lafon; yes! he asked what he fired snowballs at him for; Lafon made no answer; Hebring took hold of him and knocked him down and punched him right in the face as hard as

he could; Dr. Lafon's son did not strike before they took hold of each other, the butcher boy did; they were right in the gutter; saw the shovel; that was laid on the curb stone; saw some one pick it up; the larger Dr. Lafon's son; he hit the butcher boy three times; he took hold of the iron part close to the blade and hit him with the handle; they were pretty hard blows; was standing on Dr. Lafon's stoop; I got on Dr. Lafon's stoop as soon as the butcher boy ran to Dr. Lafon's youngest son; stood there till he had done, to see what he done to him; saw where the elder Lafon's son came from—he was up-stairs and came down the front stoop; did not hear him say anything; Hebring was on the top of young Lafon fighting; right by the gutter; the elder Lafon hit the butcher boy, then went up on the stoop; he chucked the shovel down; I saw the Hebring boy was hurt—blood was running out of his ear; he groaned; did not hear him say anything; saw him try to get up a couple of times; stayed there about fifteen minutes; the Hebring boy laid out there about two minutes; did not see him taken from the sidewalk; did not hear the Hebring boy hallo from his wagon before he jumped off; don't know where his wagon was when he jumped off; did not see him jump off; when I first saw him he was running up the sidewalk; Dr. Lafon's boy was shoveling his walk; Hebring asked young Lafon why did he fire snowballs; don't know what Lafon said to that.

Cross-examined. Was shoveling the walk of the house next Lafon's; don't know the lady's name who belongs to the house.

The butcher boy did not pass me after he got out of the wagon. I don't know why I went on the stoop; was a little frightened; saw the Hehring boy running up; I don't know whether he seemed mad—angry; don't know the boy I went to across the street to tell of the affair; I have not seen him here; the boys lay right across the gutter.

Anna Poor. Am fourteen years old; am daughter of Rev. Dr. Poor; was in Cedar street the morning of 5th December; in Mrs. Bell's house, second story; next door to Dr. Lafon's; Dr. Dennis' house; he married my sister; was looking out of the window; saw part of the affair; the handle of the shovel raised in the air, but did not see where it hit nor who it hit; or who raised it; saw the person; saw his head; did not see the face to recognize him; his hands held the shovel next the blade—right down next the blade; I saw his hands—both hands; did not see where the blows struck. Am not positive whether I heard the blows or not; the window was shut; when I saw the shovel raised, saw it brought down; did not see where it landed; heard a noise when the shovel came down; seemed as if it was striking something; saw the shovel raised three times; heard this noise three times; the last one sounded as if it was striking the sidewalk; the first two sounded as if it was striking the back; Dr. Dennis was in that room; don't know which window he was looking through.

Wm. L. Thompson. Am a surveyor; have made the map produced here, showing the distances from Dr. Lafon's to the corner

of Halsey street, and from Dr. Lafon's to the corner of Broad street.

John S. Ball. Was the constable acting on the coroner's inquest held on the body of Joseph Hehring; have seen this shovel before; got it the day of the inquest, at Dr. Lafon's house; I left it in Mr. Manners' office with this one, where the inquest was held; both shovels were at the coroner's inquest.

Joseph Lafon. Am a son of Dr. Lafon; the shovel produced is my father's; I used this shovel on Saturday morning, 5th December, in front of my father's house, cleaning the sidewalk.

Cross-examined. There were two shovels there belonging to my father; one I used and the other was loaned to Stickles; Stickles returned his and I returned mine to the cellar; went on for about five minutes shoveling the walk after the boy was hurt; don't remember where the shovel was from the time I had it in my hands until the time the servant girl put it away; did not give it to anybody; left it at the basement door.

The Counsel for the Prisoner demanded that the state should examine the witness, who was the person named by the other witnesses as engaged in the original conflict with the deceased, upon the details of the occurrence, or at least that the defense should have the liberty to cross-examine him as a witness on the part of the state as to such details, and that the court should so order.

The COURT refused the motion.

George Burgesser. Am a butcher; work for Mr. James E. Bathgate, Jr.; have been employed by Mr. Bathgate over

two years; knew Joseph Hebring; saw him on the morning of 5th December drive out in the wagon; about three-quarters of an hour afterwards I saw him again over in Dr. Lafon's house; I was at market and some one came and said one of our boys had got knocked down in Cedar street, and the boss sent me over to see what was the matter with him; went over to the street and saw blood on the sidewalk, and was told he was in the basement of Dr. Lafon's; was going down and Joseph Lafon locked the door and I could not get in; went back to the market again, and the boss sent me back to get him; went again and they was not going to open the door; told them Mr. Bathgate had sent me to see how he was; they opened the door, and they was washing him off; it was a lady who was doing it; don't know who it was; did not see Thomas Lafon the first time; saw Joseph Hebring the first time in the basement—they were washing his face off; did not stay because they wanted to get him off to the market to take care of him; got the wagon at the corner of Halsey street, and I went into the basement again where Joseph Hebring was; Thomas Lafon came down stairs; the lady and the man was in who were there before; Thomas Lafon came down stairs into the basement; he did not say anything, but Thomas Lafon helped me to carry him out to the wagon; it seemed to me Hebring was hurt badly, he could not stand and could not walk; we sat him on the seat and Thomas Lafon drove the wagon and I was in the back part of the wagon holding Hebring up; he drove him to the market; did

not ask Lafon any question at all about Hebring; he told me he was not going to see his brother licked of him—getting beat of him; when we got to the market we took Joe and laid him in the office on the lounge; left Joseph there, and I had to go to work; that is all I know about it; saw Joseph Lafon outside his house and he locked the door on me so I could not get to see Joseph Hebring; he was outside on the sidewalk.

Cross-examined. There was not many people there when I got there—only a couple of boys; am a German; I have been in this country seven years; all Thomas Lafon said was "he did not want to see his brother getting beat of him;" did not ask Thomas anything at all; when I came into the house did not tell Thomas I wanted to take the boy home in the wagon; I said if he was well enough I was to take him home to the market; the lady said I could take him; I don't know who it was.

Stephen Hebring. Am the father of Joseph Hebring; Joseph was about five feet two and a half inches high; he weighed 114 pounds; he was rather small for his age; no taller than Joseph Lafon, but a little stouter; in winter he used to wear a skating cap and pull it over his ears; don't know how he was dressed that morning.

Mrs. Agatha M. Hebring (re-called). Joseph generally wore a hat, but that morning he wore his skating cap; to keep his ears warm, he pulled it over down to his neck; it was made of wool—black and red; he wore another hat over it.

George Burgess (re-called). Hebring had nothing on his

head that morning but the cap that his mother has just shown

you; he had it pulled down over his ears.

THE WITNESSES FOR THE PRISONER.

Joseph Lafon. Am the son of Dr. Lafon; am fifteen years and seven months old; live with my father; did not know Joseph Hebring; first saw him on Saturday morning, 5th December, through the back of the butcher wagon; he was going toward Halsey street, through Cedar; threw snow on the top of his wagon with the shovel; did it in play; the wagon had a white cover but the back cover was up; did nothing to Hebring or his wagon besides throwing snow on it; am not certain where the snow struck; Hebring turned round and swore at me in the wagon; answered him; don't know what oath he said—but if I did it over again, he made some threat; don't know exactly what it was now—and I told him he would do no such thing; believe he said he would punch my head off; he said nothing approbrious or unpleasant only that he made use of the oath; I told him he would do no such thing; that is all I said; he threatened to punch my head off if I tried it again; he drove to Halsey street and jumped off the wagon and ran toward me; stood still and said nothing to him as he approached; stood about a foot from the curb; he struck me in the left cheek with his fist rather hard; I stepped back; said nothing; did not strike him; he made a strike at me again, and I struck at him with the shovel; had hold of the handle and held it up as if I was going to hit him; I made a feint at him; did not throw the

shovel forward; he grabbed for the shovel and got hold of it, and I left go; he dropped the shovel and caught hold of me; we both struggled and fell; I was under him; the fall was severe for me; it knocked the breath out of me; did not feel able to make any resistance to him; he took hold of my hands and commenced striking my face; put his knee on one of my hands and held the other with his hand and struck me in the face a number of times, very hard; believe my brother came down the steps then; first thing I saw was the shovel in the air; saw just the handle; I heard it strike the boy's back twice; during that time I received blows—on the face—from Hebring; the next I noticed he was struck in the head and he rolled off me, and I got up; he was groaning and called for somebody to send for Jim Bathgate; there was nobody around; blood was streaming from his ear; looked round for some one to come and help me; saw my brother after I got up; he came to the window; after I got up from the struggle did not see my brother; did not see him go into the house; saw him after come to the parlor window and I saw him ring the bell for Dr. Dennis, in the casing of the front door; when Hebring was striking me I was lying on my back; he was on me right across my breast; one of his knees was on my right hand; his other knee was on the sidewalk; he hurt my face quite badly; it was swelled up and lasted till next morning;

I felt other injuries; my shoulders and arms were lame so that I did not feel able to do anything; I did not go out that day; said nothing while I was down to Hebring, and Hebring said nothing; did not ask him to let me up; don't recollect whether I called for help; had seen my brother before the fight between me and Hebring at the window; he was standing looking out; he was walking up and down; at the time of the contest, when the boy came up, I did not see my brother; saw George Burgesser at our house in the morning; did not shut the door upon him that morning; there was a catch on the inside so that you cannot open the door without a night key; when they took Hebring down they shut the door behind them; that door is usually shut; the boy was brought to the stoop first to go in; don't know why they did not go in.

Cross-examined. Had seen Joseph Hebring often before going round with meat; had seen him before that morning, but was not acquainted with him; threw the snow on the top of the wagon, from the sidewalk to the middle of the street; did not make considerable effort; did it easily; believe it hit him; am not sure; he said if I did it again he would punch my head off; told him he would do no such thing; when I said before the coroner's jury that he said "you son of a b—ch, if you do that again I'll punch your head off," suppose my memory was better then than now; those were the words he said; when he used those words, I said he would do no such thing; he muttered something I could not understand, and said "you will,

aye!" and then jumped out of the wagon and ran for me; I was standing in the gutter—off the sidewalk; did not move from that position until he struck me; was struck on the left cheek when I fell; made a feint at him when he struck at me with the shovel; got hold of him at the same time he got hold of me; round the neck; we clenched; we struggled and both fell; he put one of my hands under his knee and held it by his weight; he was straddling me; he held my other hand with one of his and struck me with the other; don't know how long I was that way before my brother came out; did not seem to me over three minutes when he grabbed me first to being down; he commenced hitting me as soon as I was down; quite a number of times before my brother came; there was not much interval between our fall and my brother coming; did not see my brother come down, nor pick up the shovel; saw the handle of the shovel in the air; I did not see how my brother held it or who held it; I did not see where the shovel struck; from the sound I say it struck the back; immediately after receiving that third blow he rolled off me and I got up; my brother in giving the three blows gave them in quick succession; saw the blood from Hebring's ear as he lay on the sidewalk, and heard his groans; looked round for some one to come and help me; did not call for my brother; saw Stickles shoveling off the sidewalk a short time before; did not ask Stickles to help Hebring; I stood on the sidewalk after that about one-half an hour after Hebring had gone—part of the time shovel-

ing and part of the time standing talking to people standing round; after that I went into the house; before Hebring came along was playing with the snow and shoveling; I went to Dr. Fish's house after the occurrence—a minute or two after Hebring went away; took my cue with me to play croquet with Fred Fish; got it at my house; did not play croquet, because Fred did not want to; while I way lying upon the sidewalk and Hebring upon me there was no blood drawn from my face; there was no marks of blood; believe there were no scratches; my father did nothing for me; made no prescription for me; he is a physician; made no complaint to my father about being hurt; nor to Dr. Dennis; next morning complained of my shoulders being stiff; father made no examination of my shoulders, or no prescription for me; am not in the habit of shoveling snow or using a shovel; am not accustomed to manual labor; my cheek was much swelled; first noticed it as soon as I went into the house—after I came back from Dr. Fish's; when I was at Dr. Fish's Fred told me my cheek was swollen; believe my father was home that Saturday; don't remember about Dr. Dennis; the bell my brother rang for Dr. Dennis is in the casing outside the front door; saw my brother ring the bell outside; Hebring was then on the sidewalk; was standing on the sidewalk; don't know whether my brother saw me throw the snow on the wagon; saw him standing at the window a moment before the wagon came along; could not say it was true if I said before the coroner's jury "My

brother was in the front parlor, at the window, when I threw the snow, and he saw me throw the snow," because I did not see him; believe I did not look at the parlor window while I and Hebring were in the tussle; the shovel produced is the one my brother struck Hebring with; did not see how it was raised; only saw that part of it—the handle; don't know how high it was raised. Did not say to Hebring in reply to anything he said that it was none of his d—d business; did not swear.

Emily Hornblower. Live in Cedar street, three doors from Dr. Lafon; came out into the street immediately after the occurrence; the boy was lying on the sidewalk; saw nothing of the fracas; saw Joseph Lafon then; noticed that he had been struck on the face and was very frightened, or as they commonly say, "dazed;" he was so frightened he did not know who he was addressing; did not see Thomas.

Cross-examined. The report of something going on in the street brought me into the street; heard Hebring moaning on the street; the first person I saw was Joseph Lafon; was standing on the sidewalk in front of his father's stoop; it was evident Joseph Lafon had been struck in the cheek; it was red, not the color of excitement or exercise, but the color of the blow; doubt whether shoveling snow would have had the same effect; have boys, and when shoveling snow it sometimes gives them a redness in the face in winter time.

Ruth Lafon. Am mother of defendant, Thomas Lafon; was at home on the day of this occurrence, but did not see it; heard of it from Thomas first;

heard Thomas' footsteps and judged from the sound—his walking from room to room, he was looking for me; I stepped from my place; I listened to his remarks; told him to bring the boy in and did not then tell him where to bring the boy in; followed him then into the entry; he went quickly down stairs into the street; followed him down the steps and called to my servant to come immediately; saw Thomas bringing the boy up the front steps, and called to him to bring him to the dining room; for the reason was the house was cleaning and open and it was therefore inconvenient, and the dining room was ready; my servant came to meet the boy at the entrance to the house, and Thomas took the boy by the arm, and the person holding him drew back and she assisted the boy with Thomas; had him in a chair and directed them to bring water and cloths; examined him as thoroughly as I could; found very little blood issuing from the ear; washed it off and very little more appeared; sent for Dr. Dennis; he did not get my message, but came from seeing and knowing of the circumstance; he examined him; asked the boy if he had a mother; he said he had; asked where she lived; he told me; just at that point Dr. Dennis came and I asked him the nature of the injury; he said he did not know—it was internal, because he could not find any external injury; he asked the boy if he had a mother and where she lived; after I had washed him and done all I could, a man came rather boisterously to the door; stepped forward to the glass door and I asked who he was; he said he came from

Mr. Bathgate's, and then I opened the door; previously Dr. Dennis had said he must be taken immediately home and articles put to his feet to warm him, and rather hurried the matter to be attended to at once; this man and Thomas led him out of the house and put him in the wagon. Joseph's age was 15 years last July; Thomas was 20 years old 28th October; Thomas has been brought up in New-ark.

Cross-examined. Thomas was bringing Hebring boy up the front stoop and another person—a stranger—a plain looking man, Strickles; directed Thomas to take him down the area steps and he did so; Thomas returned home about Thanksgiving, and for fifteen months previous had been at Ohio; he was living in Missouri up to about two months previous to leaving for Ohio for six months; he was engaged in farming; before he went to Missouri he lived at home.

Re-examined. Saw Thomas instantly after I heard him going quickly from one room to another looking for me; he wanted advice of me; am not positive whether he asked me to do anything, but I got the impression what he wished; there was no time, of any account, elapsed before I went; did not go to the door; was on the stairs descending; went out and got the boy and assistance, and got one or two steps up the front stoop; directed him to return and take him back into the dining room.

Dr. Samuel H. Pennington, Rev. Dr. J. P. Stearns, Henry H. Miller, Dr. E. D. G. Smith, Samuel H. Pennington, Jr., Bloomfield Miller, Wayne Par-

ker, Cornelius B. Bradley, Rev. Porter testified to the good character and peaceable disposition of the prisoner.
Dr. Poor, Lewis Stearns, George
W. Hubbell and Preserved H.

Mr. Titsworth and the *Prisoner's Counsel* respectively agreed that the depositions of Chilian Stickles and Joseph Lafon, taken before the Coroner should go into the case, whereupon the evidence was closed.

THE SPEECHES OF COUNSEL.

MR. PARKER FOR THE PRISONER.

Mr. Parker. It gives me great satisfaction, gentlemen of the jury, to be able on this occasion, the first on which I have appeared at this bar for twelve years in defense of any man, to enter upon it with the same sense of duty which I endeavored to illustrate when filling the place of my learned adversary, and to assert for my client that he is guilty of no crime; that he is simply unfortunate; that he obeyed an impulse which was honorable and just; which sprang from the better, not from the baser part of his human nature; and that therefore, because he is morally unfit to enter them, undeserving of punishment, the prison doors which open before him ought to be shut, and he should be proclaimed free from legal, as he certainly is from moral blame.

What has he done, gentlemen? I do not ask what has happened. We all know the sad tale. We all mourn the untimely fate of the deceased. We all sympathize with the grieving mother and father, "refusing to be comforted because he is not." This lad at your bar, not from apprehension, but from kindness and conscientiousness, grieves more than any one over the sorrowful event which brings us together. His life is blighted by that disastrous blow, But what has he done? Gentlemen, if no death had resulted—if the blows given had simply achieved their purpose and compelled poor Hebring to quit the body of his prostrate opponent, and then, if a Grand Jury could have been found to indict for assault and battery, what would be your verdict? Would you have hesi-

tated? Would you not at once acquit? And if you would, why should the result be different, when all the defendant did was to assault the man who assailed his younger brother, and no more dreamed of serious evil, much less of death, than did young Hebring himself. Take this suggestion to your minds, gentlemen, it is the point of the defense we make.

The theory of that defense, gentlemen, at large, is this: That the defendant had a right to defend his brother, to the same extent the brother had; that the violence he used, so far as he intended it, was not unreasonable nor more than his brother had the right to use; that the death happened through the mischance of the deceased turning his head, at the same time rising, so as to receive this blow on the side where the skull was thin—and hence that this case comes directly within the definition of death *per infortunium*, a homicide excused by reason of its happening through misadventure.

For the purpose of clearly stating the law, I shall here assume certain facts—later I shall prove them. 1. That the deceased was the assailant upon Joseph Lafon; 2. That when defendant saw the combat his brother was helpless in the hands of deceased—who was administering to him blows with the intent of doing great bodily harm; 3. That defendant then rushed out, and taking the spade, as if it was a cudgel, struck deceased; 4. That deceased turned and at the same time raised himself, and his head thus received a blow, which, but for his change of his position, would have been harmless.

If deceased was the assailant and Joseph Lafon was suffering blows, the right of self-defense existed on Joseph's part, and it is material to settle, to what extent? Self-defense, so as to take life, does not exist, when the assailant does not seek life, till the assailed has been driven to the wall—i. e., has retreated as far as retreat could be carried. That he had done—he was down—helpless—the assailant holding him skillfully and beating him. In this position he had the right to anticipate great bodily harm—but for the intervention of his brother, he would have received it. There was inequality of strength. There was avowed intention. There was perfect

triumph. There was skillful pugilistic arrangement. There was greater age, strength, everything. There was violence directed to the eyes—mayhem perhaps might have ensued—to an excited sufferer it was probable.

Now what right had Joseph Lafon? It is not necessary to claim that he had a right, intentionally, to kill. Who believes that this intention existed in any heart? But he had a right to oppose bodily harm by bodily harm—in his helplessness, to use any weapon, not necessarily deadly, nor in a manner intentionally deadly, for self-defense. Who can deny this? If Joseph Lafon had, while writhing on the ground, seized this shovel, and, using it as a weapon, struck blows which killed his assailant, without intending any special wrong—striking, as it were, at random—would he be held guilty of his death? Certainly not. It would not have been involuntary manslaughter, it would have been self-defense, clear—for the weapon was not deadly, nor would its use be meant to kill.

I put to you some cases, gentlemen: Suppose the weapon was a pistol, which was used as a stick—not as a firearm, but went off and killed. Suppose it was a sword cane, and that, used as a cane, the scabbard flew off, and not seen by the recumbent boy the blade pierced and slew. Suppose he struck blindly, and thus hit a vital part and slew. Suppose the blow was received where it could do no great hurt and a change of position brought a vital part beneath it, as we say here, clearly this would present no crime.

And there are the best of reasons for this conclusion, for:

1. The act was lawful. It was so, because it was only self-defense—preventing bodily harm by bodily harm, of the same nature and not unequal degree. The fist and the stick are both striking weapons. Position, opportunity, strength, skill, may make either one superior to the other.
2. No intent to do the greater injury existed. That sprung from chance. For that no one is responsible.

Whether manslaughter be voluntary or involuntary, there is always an unlawful act intended and performed. There can be no crime without an unlawful act intended and per-

formed. In the supposed case, no unlawful act was intended, and so none could be performed. Further on I shall cite the law on this matter, settling and describing what is homicide by misadventure.

I submit then, that Joseph Lafon had the right of self-defense in this case to the extent of justifying homicide, if he had committed it, just in this way—intending only to meet force by force, and unintentionally slaying. And I contend next—that Thomas Lafon, his brother, standing near, and seeing his imminent danger, had the same right exactly. He had a right to join in this combat. He had a right to administer blows of the like nature with those given to his helpless brother. And if, by chance, and undesignedly, one of those blows slew—it is misadventure only—and he can be convicted of no crime.

It is intimated by eminent authority that this right of interference—of joining in the quarrel and aiding to beat off an assailant, belongs only to the relations of parent and child, husband and wife—not to brothers. On principle, why? Suppose a brother find a sister struggling with dishonor, in the grasp of a villain,—shall he not do for her what sufficient strength prevents her doing for herself? Suppose a brother find a young sister, a child, in the hands of some one who is endeavoring to carry her away, though without felonious intent—only unlawfully. Suppose a brother find a younger one, and that a child, utterly overpowered, and at the time receiving great bodily injury—helpless—must he parley or strike? Must he ask what are you doing? Must he run in to the mother and tell her? or may he not at once act upon the evident necessity to save his brother?

Cain exclaimed, “Am I my brother’s keeper?” Does the law indorse the principle of which he sought protection? It was God who asked, “Where is Abel thy brother?” and though the question was, “Why have you murdered him,” it involved the principle that it was his duty to defend him. Blackstone does not exclude this brotherly interference. He says (Vol. 4, p. 186), “Under this excuse of self-defense, the principal

civil and natural relations are comprehended; therefore, master and servant, husband and wife, parent and child may assist each other." It is only that he particularizes these relations affirmatively—not that he negatively excludes any he does not mention.

I beg pardon for asking your attention to rather a long citation from the book of acknowledged authority. I read from 1 East's Pleas of the Crown, page 289:

"3. As to the persons by whom such justification or excuse may be urged;

"In all cases where a felonious attack is made, a servant or any other person present may lawfully interpose to prevent the mischief intended; and if death ensue, the party so interposing will be justified. Thus, in the instances of arson or burglary, a lodger may lawfully kill the assailant in the same manner as the owner himself might do. This is subject however to the same limitations I before noticed. In this respect I see no difference between the case of the person assaulted and those who come in aid against such felons.

* * * * *

"If A and B fight upon malice, and C, the friend or servant of A, not being acquainted therewith, come in and take part against B and kill him; this is murder in A, but only manslaughter in C; otherwise if C had known that the fighting was upon malice; for then it would have been murder in both. But if A had been assaulted and had retreated as far as he could and then his servant had killed the assailant; it would have been *se defendendo*.

"Upon the whole, although Lord Hale and others appear sometimes to intimate a distinction in these respects between the cases of servants and friends, and that of a mere stranger; yet it must be confessed that the limits between both are no where accurately defined. And after all, the nearer or more remote connection of the parties with each other seems more a matter of observation to the jury as to the probable force of the provocation, and the motive which induced the interference of a third person, than as furnishing any precise rule of law grounded on such a distinction."

Later authorities are clear on the point. 2 Bishop's Cr. Law, § 662; also, § 630, 631, 633, 634. Wharton on Homicide, 230, states the doctrine rather loosely, and cites Com. v. Riley, Thatcher Cr. Cas., 471. Som. v. Drew, 4 Mass., is a case where a fellow workman was held within such relationship as to be excusable in interfering. In Ady's Case, Leach, 248, 1 East, 329n., a paramour was held within the benefit of this doctrine of relationship. Reg. v. Tooley, 2 Mod., 242. Entire strangers were held excused for interfering to get a woman released who turned out to be unlawfully arrested. People v. Cole, 4 Parker C. C., 40. The court allowed defense that defendant interfered to protect another standing outside the specified rela-

tions, and held if the jury thought murder was intended it was right to use fire arms—otherwise if beating only was designed.

These authorities are sufficient to settle that what Joseph might do for himself, Thomas might do likewise. Neither had a right to intend taking life—either had to defend Joseph, and if in exercising this lawful right, accident joined and produced death—there is no crime—for there is no unlawfulness and no guilty intent. If either had used a knife and struck to kill, it could have been but manslaughter. But that, it is not necessary to discuss.

I said that I would cite the law to describe the case in hand and show that it is no crime. I take as clearest and most preferable, the definition of manslaughter given by Lord Coke. (3 Inst. 56.) "Homicide by misadventure is when a man doth an act that is not unlawful, which without any evil intent, tendeth to a man's death." Bishop (Cr. Law, p. 614-642) quotes Blackstone, adopting Hawkins, who instead of saying "without any evil intent," says, "without intent of hurt." This is loose. Illustrations are given in 1 East. P. C. § 40: A man corrects his child—he means to hurt him, but he has no evil intent. An accidental change of position or other misfortune renders a blow fatal. It is homicide by misadventure. So with officers punishing soldiers—a man shooting when in play. The real principle underlying all is that there must be evil intent. If no intent, no crime.

The law of homicide may be thus summed up: Evil intent, inexcusable, to take life, is murder. Evil intent, excusable, to slay, is manslaughter. Evil intent, inexcusable, to injure or do some great bodily harm, is murder in the second degree. To do some unlawful act not involving that which results in death, is involuntary manslaughter. No homicide without assault—no assault, technically, without intent to do wrong. Whenever only right is intended, and nothing done in excess of right, the consequence is misfortune, though it be death.

These are the principles of law, gentlemen, and now I turn to you to demonstrate the points of fact, which hitherto I have taken for granted. I insist: 1. That the deceased was the

assailant of Joseph Lafon. 2. That when defendant saw the combat, his brother was helpless in the hands of deceased, who was administering to him blows, with the intent of doing great bodily harm. 3. That defendant then rushed out, and taking the spade as if it were a cudgel, struck deceased, with no intent to do bodily harm, or more than to protect his brother. 4. That deceased turned and at the same time rose, and his head then received a blow intended for his back, and which, but for his change of position, would have been harmless.

That the deceased was the assailant upon Joseph Lafon. Chilian Stickles, himself, whose account of this transaction is so different from everyone else, that it seems as if he had not actually been there, says in his examination before the Coroner's Jury that Hebring told young Lafon if he fired another snowball he would knock him over the head; that he got out of the wagon at the corner of Cedar and Halsey streets, went back, and after words between them drew off and struck Joseph Lafon by the side of the head with his fist. Mrs. McCormick, the nearest of all the witnesses, corroborates Stickles' story. James Allen tells you that he saw the "butcher boy" come out of his wagon, and come up to young Lafon and punch him in his neck; that that was the first he saw; that Lafon said nothing to him when Hebring asked why he threw snow at him. And Talmadge, who passed Hebring, both driving wagons, says he saw Hebring come back and strike the younger Lafon.

These are all witnesses for the state. Joseph Lafon, called likewise for the state, though not upon this point, states everything in detail, and says, that after throwing snow against the wagon Hebring turned, swore at him, said he would punch his head off, or something similar, and he replied to this, simply, that he would do no such thing; that he then jumped off the wagon, returned and struck him on the left cheek with his fist, when he stepped back, struck him again, and so commenced the struggle, which, in its later stage, defendant saw from the window. When he looked, his brother was lying flat upon his back on the stone sidewalk, helpless, in the hands of

the deceased, one hand under one of his knees, the other clutched in his own grasp, and forcibly held across his body, while the deceased, with every apparent intent of doing him all the harm he could, was striking him in the face and near the face, with all his force. No question exists as to the truth of this narration.

Miss Searing looked from the window opposite; she saw them in the beginning of the struggle; after the first blow, Hebring seemed trying to throw Joseph, while Joseph seemed trying to get rid of him; Hebring threw him on his back, took his place upon him, and was pounding him about the head and neck; then, says she, "Thomas came to the window, looked out, and instantly came out, picked up the shovel as he passed to the boys, and struck these three blows."

Mrs. McCormick tells the same thing, with the addition that Thomas came out bareheaded and in his slippers. Charlotte Condit relates it almost in the same words, and both she and Mrs. McCormick say that while he was down Joe did nothing; that they saw that neither his hands nor his feet were in use. The violence of Hebring's attack was most graphically described by Talmadge, the colored man: Hebring, he says, was striking very heavily; was hitting him fast; was in earnest; giving him no chance; was striking at his face. James Allen says, Hebring took hold of him and knocked him down and punched him right in his face as hard as he could. Joseph Lafon says, we struggled and fell, I under; the fall was severe for me; it knocked the breath out of me; I did not feel able to make any resistance to him, he took hold of my hands, put his knee on one and took hold of the other; striking me in the face; he struck me quite a number of times very hard; I believe my brother came then; I received blows from Hebring during that time, the time when the shovel was used, more severe than when he came out.

And Mrs. Hornblower, one of the most intelligent of Newark ladies, came out immediately after the disaster, and noticed Joseph's appearance; a mother, and used to seeing her boys

after contests of this kind—she says, she saw that he had been pummelled in the face; describes him as appearing dazed, and realized at the time that the assault had been severe.

It may be urged that little harm turned out to be actually done, but what of that? All was done that could be done; at least all appeared to be doing all that could be done; certainly to a brother's eye, and that is all that the case calls on you to realize. While the parties are in this attitude, the younger brother helpless, the assailant unknown, his appearance that of a person accustomed to acts of violence, his attitude and action those of a master of the business he was then engaged in; the defendant rushes out, prompted by no anger, obeying an impulse as laudable as it was natural, and having a right, if our view of the law be correct, to assist his brother, and to meet force by force—to equalize the contest between the parties. He seizes the spade, he uses it, not as the weapon which it might have been, and with no intent to do great bodily harm. The harm it did produce was as great a surprise to him as it was to every one conversant with the transaction. His manner of use is clear. He uses it as a stick. He struck with the handle. There can be no doubt on this point, and it is a material one to consider.

Mrs. McCormick, passing so that she must almost have stepped upon them, states positively, on her examination in chief for the state, that he struck him with the handle of the shovel—with the flat part of the handle. Dr. Dennis, looking from the second story window of the house next door, and able only to see the instrument as it was raised, swears, with like positiveness, that it was the handle which rose and fell. Young Allen says, he took the handle of the shovel, above the iron part, and hit him with the handle. He held it this way, says the boy, and showed you how it was done. Annie Poor saw the shovel raised as she looked out of the same window as Dr. Dennis; saw the handle, though she did not see what it hit, nor where it hit, nor who held it. She saw some one's back and some one's hand, and swears that his hand held the shovel right next to the blade, on the handle. Joseph Lafon saw dis-

tinety that it was the handle with which he was rescued, saw it rise, marked each blow, and cannot be mistaken.

Here are witnesses having the best of opportunity, entirely positive, and entirely reliable. Those who do not agree with them are not positive and do not contradict.

Mrs. Crowell says, "I do not feel as if I could be at all sure what part of the shovel was used." Mrs. Woodruff only thinks it was with the blade that he struck. Miss Searing says, "It seems as if he struck with the blade, but of that I will not be positive." And Stickles has the same uncertainty.

And this fact joined with others to demonstrate that the defendant had no intent to do bodily harm; in fact the idea of such an intent is almost ludicrous, if one will consider a little. Why did he not seize the shovel by the handle, using the edge for a weapon and split the skull at once, if he had wanted to do injury? Why did he not, although desirous to avoid such inhuman extreme, with one blow given on his side, knock the assailant—as he might—clear off from his brother's body? The flat of the shovel used with half the force in his power could easily have done this. Instead of this, he gives blows which evidently were not violent and as evidently must have been restrained. For notice, that the first blow did not even attract attention; the assailant went on pounding or punching, to use the different words of the witnesses, paying no heed whatever. The second blow quickly followed. That made no special difference. There was no groan. There was no cry. There was no convulsive start. The only effect observed was that he turned his head as if to see who was striking, and at the same time rose, as indeed he must, in order to see from the almost recumbent position in which he was stooping over the boy Lafon. And note lastly, that the physicians found no wounds or bruises elsewhere—than the almost imperceptible abrasion on the head.

In another thing do all witnesses agree—that the blows were in quick succession and were almost alike in character. No witness applies to them terms of great severity; all use

adjectives which diminish the force of what they say. To Mrs. Crowell, "they seemed hard"; to Mrs. Woodruff, "rather severe"; to Mrs. McCormick, "all three quite hard, about alike, all three"; Miss Searing says "they did not seem very hard, I don't think they were hard enough to do harm if one had not struck him in the head"; Charlotte Condit says, "pretty heavy, in quick succession"; Chilian Stickles, "pretty hard"; James Allen, "pretty hard."

Did ever a case occur when violent blows were struck which every witness thus qualified in description? Nor does the effect produced, as shown by the medical testimony, prove this blow severe. True there was a crack in the skull, but the abrasion was on the thinnest part of the skull, proverbially most dangerous; the thinnest part, says Dr. Dougherty, of the skull, thinner than usual, which there, as often was quite "brittle." The fissure left the abrasion and started downward, and in its course striking the bone of the ear, the crack extended through that bone, but what of that! A moment's thought will tell you how easily this might be, and yet the blow be light. Strike a glass upon its edge, thicker though it be toward the bottom, the blow, if sudden, will crack it to the bottom. Strike with a stick, a watermelon smartly on its side, the bruise cracks it transversely. Stamp your foot upon the ice, and the crack flies hither and thither, amazing the observer. Take an illustration which I read you from Taylor's Medical Jurisprudence, where a simple tap by an officer holding a party in arrest, broke his skull, and occasioned his death. It is not the violence of the blow that produces such a crack, it is its suddenness, mostly. Why, gentlemen, a violent blow with a heavy stick of the size of this upon the side of one's head, rising as it meets it, would smash it in, and produce no crack, but almost pulverization.

Having thus no intent to do any great bodily harm, the question is, how much force had he a right to use? He had Joseph's rights, as I have shown you. I might even argue that he had more, if the rights of each are according to what they realize; for Joseph, feeling, knew better than Thomas,

seeing, knew, what force the assailant was using, and therefore what he needed to equal. I will not repeat to you what the witnesses say as to the violence of Hebring's blows; did they not appear violent? That is the point. If to Talmadge, the colored driver, and to little Allen, who stood upon the Lafon stoop and looked on, and to Joseph Lafon as he lay there, the appearance was of blows given with all possible force, the party striking, kneeling over his prostrate foe, securely holding him in a manner to indicate power, skill, triumph and ill intent: if, I say, things appeared thus to the uninterested, how did they appear to this elder brother, accustomed to think of the boy near six years his junior, as but a child, and utterly ignorant that this young butcher lad was not a grown man? What appeared, settled his right; what reasonably appeared, I mean; reasonably, having regard to all the circumstances and means of knowledge in his possession.

There is a case cited in the books where one seeing another down and an assailant striking with apparent violence, handed to him a knife, with which the assailed took the life of the assailant, and he was held not guilty of crime. The law is definite, that in cases of self-defense by a party helpless, blow may be returned for blow, and that the violence of such blows will not be carefully measured. It is only when a man having a chance to escape will not take it, that the law measures the resistance he makes.

Thus, I submit, gentlemen, justified by law, because he acted without criminal motive and in aid of one whom it was his duty to aid, the defendant's last blow is attended with disaster utterly unforeseen, never sufficiently to be regretted, but for all that, naught but misfortune, for which before God or man he is in no wise responsible; for that blow struck the deceased, only because of a change of position, and but for that position would have been as harmless as those which had preceded it. There can be no doubt of this. What says Mrs. Woodruff: "It would not have been given on the head except for the boy raising and turning, it would not have struck him there but for that, it would have been given on the back."

What says Mrs. McCormick: "He turned his head to see who was striking, turned up his head and raised up; he changed his position, and it brought it on his head; it appeared to me that this change of position brought him in the way of the third blow; he turned and raised to see who was striking him, I suppose." Then Miss Searing says: "The two first fell on the back, the boy raised and turned his head at the same time, and seemed to put his head in the way of the shovel." Charlotte Condit: "He struck three blows, two on the back, then the boy lifted himself up; as he did he struck a third, which hit his head." Chilian Stickles before the Coroner, says, "He was in the act of getting up, was getting straight from being doubled up—he had his head over and was just merely straightening himself up." And Robert Talmadge: "If it had not been he changed his position, the blow would not have hit his head, he raised up and then the blow came on the side of the head; if he had lain still he would not have hit him on the head."

True, he was not called upon to lie still; true, if the defendant was not justified in his blow, the whole complexion of the case is changed; but if he was justified in his blow, if it was without evil intent, if on the contrary it was with lawful and good intent, if the blow as such was not unlawful, then the death which came from it was not unlawful, either, but was simply and solely misfortune. Just as when a father correcting his child wrings his own heart by inflicting fatal but accidental violence. Or an officer punishing a soldier, or any individual, acting carelessly, but not unlawfully,—as one in sport,—happen by accident to take life, all are excused, for the law punishes crime, and requires evil intent or unlawful conduct. Here is the keynote of the defense, which I sound and sound again, that it may not be forgotten—to convict this defendant his intent must have been evil or his act must have been unlawful. Neither of these things exist in this case; his intent was noble, rather than evil; his act was what no law prohibits. If he struck from personal animosity, simply, or if the act he meditated was unlawful, then the state may succeed, but if the

act he meditated was lawful, and the act performed was likewise, a result un contemplated and purely accidental, involves neither turpitude nor crime.

Here, gentlemen, is the moral gravamen of this case: If this defendant goes to the penitentiary, he goes innocent of crime; he meant no wrong; he did what you might have done, what your sons would be still more likely to do. He had no malice, no knowledge even of this unfortunate boy. His first sight of the occurrence was when he saw his brother on the ground. He had no time for animosity; he had no time for consideration. Blows were falling thick and fast. It was his brother who was suffering, and how can you or I or any one blame him for rushing to the rescue?

How did he behave when he realized—not death, not even danger of death, but simply that injury greater than he had dreamt of was done to this poor boy? Who brought him into the house? Thomas Lafon, obeying his mother's wish, as well as his own impulse, met him half way on the steps and aided to bring him in. It is a crime, alleged against him and his unfortunate mother, too, that they did not bring him into the entry and the parlor, which then were in confusion—the very act of cleaning going on, and where there was no convenience for his relief, but took him, instead, to the dining room, which was in order for his reception, and where water, and every other desirable convenience were ready at hand. To argue on this seems nonsense. When he was there, the mother washes his face, the son standing anxiously by. The doctor is summoned, and as soon as his look betrays anxiety, their interest doubles. Bathgate's boy comes over for him—they find he has a mother—learn her residence, and this defendant and a messenger go together and gently take him home. They stop at the market—there the boy alights—Thomas wishes to go on. Was he not sensible? Bathgate wishes him to go back with him to his own home. Would his mother have liked that? Thomas sees more clearly what is best; and finding that Bathgate would provide no vehicle, goes and gets one, and with Dr. Dougherty, who fully

endorses the wisdom of the procedure, carries the poor sufferer where he most wished to be, and where those who most loved him wished he should be. Before they go, some stranger scolds the defendant. His reply is, "I have done it—I feel as badly as anybody can do about it. I am responsible for it. Hebring was on top of my brother, I thought he was a larger person, and I went out of the house and hit him with the shovel." To Burgesser, he says in the wagon as if soliloquizing, "I was not going to see my brother getting beaten of him." To the doctor, "I know you will think it a brutal thing, but I saw him on my little brother and I went to get him off," and the doctor adds, though he does not recollect, that he may have said that "he had no idea of doing him any hurt, and expressed surprise at what he saw of the injury." And when he goes to his home, and sees his mother, and witnesses her natural grief, he asks a question which seems to me most natural—his only remark—for what words could express the feelings which tormented his heart?—was, to ask her how many children she possessed. All this to me seems—not cold—not unfeeling, but the natural conduct of one who shrunk from the thought that he had done any hurt, and upon whose mind, instant by instant, the extent of the hurt done was dawning. Some natures, mostly thoughtful of themselves, bemoan their conduct violently, thinking that thus they will help screen it from animadversion. But other natures—deeper natures, and more unselfish, are horror-struck by the discovery that they have done unwitting evil, and are silent because unable fully to express their self-reproach, while they labor with all their might to do what they can to alleviate the suffering they have accidentally inflicted. Day after day did this boy visit the family his hand had afflicted. By day and by night, this terrible scene is in his memory. Convicted or acquitted, the thought will never leave him that he has been the occasion of another's death, and he needs no punishment that the law can inflict to deepen his sense of what he has done.

And now, gentlemen of the jury, my task is done. I leave

the defendant in your hands. You cannot wonder at my solicitude or my zeal. You do not. You are fathers, brothers, men, Christians. You know I speak the truth when I say that the fate of poor Hebring, lying in his shroud, is preferable to that which may befall this boy at your bar, as a consequence of the verdict which you may give. Child of fond parents, their eldest hope and pride, unstained by vice or crime, member of a Christian church, beloved by a large circle of relatives and friends, no wonder that he shudders, no wonder that they and I shudder at the possible close of this sad drama. Over his bright and happy future, a dreadful cloud already hangs, and must hang, though you release him, till years live down the suspicion which mere accusation necessitates. But one fearful word from you and this cloud settles around him, black, dreary, perpetual. Gentlemen, can you speak it? You are to do justice, but to love mercy. You are to give him your doubts—all doubts which are reasonable. Under the evidence in this case, is the State Prison his desert? Think what it is to him—innocent, beyond question, of guile—the extent of whose possible fault is indiscretion—not even impelled by momentary animosity—obeying an impulse which God makes his duty—can you fasten on his limbs the fetters of a felon? Can you see him led away in sad procession to the train, and thence to the portals of that house of villainy and vice? Can you think of him, shorn, clad in the vile dress of convicted felony, laboring from day to day, the companion of thieves and robbers and murderers—of men whose crimes deserve the ignominy they endure? It is not fit, gentlemen, that this suffering should be his. You cannot impute to him moral guilt, and no man should enter there devoid of that, to endure the torment which an unstained soul must suffer, degraded to such companionship. Will you say, this may not be his fate? But your verdict against him must be of almost equal horror. Convicted, what will he do? What room for usefulness or happiness in his future? The stain of blood will be stamped upon his brow—you will write there the fearful title of manslayer, and where will he go that it may be forgotten? What will he

do to efface it? It will block his pathway everywhere. He will be an outcast and a wanderer—driven forth from this happy home, these loving friends, these doting parents—without hope. No, gentlemen, I say too much—nothing can deprive him of that. Those who have so earnestly pursued this prosecution, however successful they may prove, cannot. For he trusts in God! He has given his heart to Him! He has consecrated his life to Him! And though the worst should befall him—though he should be doomed even to the horrors of that cell, over whose gloomy doors imagination writes, “who enters here, leaves all hope behind,” still God will be with him—God will comfort him. He has trusted in Him—and he still confides, that though all human help be impotent, though flesh and heart fail, yet his God will be the strength of his heart and his portion forever.

Mr. Bradley. Gentlemen of the Jury: I feel that I encumber the case, after the very able and exhaustive address of my associate counsel. My observations will be brief, and will relate only to such points as have struck me with peculiar force.

In the first place, after a careful digest of the evidence, I will endeavor to state to you what seems to be the principal facts of the case, as they have been proved before you—founded mostly on the evidence of the state itself—but where not thus founded, so substantiated by credible evidence and so probable, that no unbiased mind can have a reasonable doubt on the subject. If I have ever made a careful, truthful and conscientious statement, it is this, and it is as follows:

On the 5th of December, after a fall of snow, Joseph Lafon, a mere lad of fifteen years old, was shoveling snow from the sidewalk in front of his father's house in Cedar street, and, boy-like, occasionally indulged in the sport usual on such occasions, of throwing snow with his companions. He had just been engaged in this play with his little neighbor, Miss Lotty Condit, having in the meantime cleared off the sidewalk and commenced to clean out the gutter. Thomas Lafon was in the house, walking the room, and occasionally stopping and look-

ing out of the window. Joseph Hebring, the unfortunate deceased, came along in his butcher wagon, going out to distribute meat for his employer. He was nearly nineteen years old, and as his mother says, a strong, hearty boy. As he passed Mr. Lafon's house, the boy, Joseph Lafon, in sport and play, threw some snow against his wagon. This enraged the deceased, and he called him by an opprobrious epithet, "You son of a bitch, if you do that again, I will punch your head off," and swore at him. Joseph said to him: "You will do no such thing." Hebring then drove on a few rods, and stopped his horse, deliberately got out of his wagon, ran back and attacked Joseph, who drew back, making a feint as if he would strike with the shovel, and tried to get away from Hebring. But Hebring clinched him around the waist, threw him on the sidewalk—fell on him, fastened his hands, and commenced pounding his head and face unmercifully, whilst the back of his head lay on the stone pavement. At this instant Thomas Lafon comes to the window, and seeing Hebring pounding his brother, and deeming him even larger than he was, and supposing that his brother was in imminent danger of being seriously injured, he ran into the street, without hat, and nothing but slippers on his feet, caught up the shovel, which had fallen on the walk, holding it near the blade, with the end of the handle, struck Hebring on the back or shoulders, in order to force him from off his brother; when, unfortunately, Hebring raised his head and turned it around toward Thomas, right in the way of the shovel handle, and thus accidentally received the blow on the side of his head, over his ear, and his skull was fractured, and his death was the consequence. Thomas was frightened and horror struck, he rushed into the house, stopping on the front steps to look back at Hebring, searched for his mother and asked her what he should do. What more he said to her we were not permitted to show. She told him to bring him in, and directed them to the dining room in the basement. He was brought in, slightly examined, was able to speak, and Dr. Dennis directed that he should be taken home to his mother. Thomas assisted in getting him into the wagon,

accompanied him first to the Market, in accordance with the request of Mr. Bathgate, then got a carriage and assisted in taking him home, and never manifested anything but the deepest sorrow at the occurrence; and never attempted to evade justice, or the strictest inquiry into his conduct.

These are the naked facts, and in view of them, it is very difficult for an honest mind to see anything in Thomas Lafon's conduct, worthy of the slightest blame. Had it not been for the unjustifiable excitement, which was incautiously and wrongfully raised, no one would have seen anything to blame him for.

For the defendant we contend that it was a case of excusable homicide. We do not contend, it is not necessary to our case to contend, that it was justifiable homicide. The latter is, when a man purposely and intentionally commits a homicide for a justifiable cause. The former is, when a man accidentally commits a homicide, against his intention, whilst doing some other act, which he had a right to do.

The case then depends on two questions: First. Did Thomas Lafon intentionally produce the death of Joseph Hebring, or intentionally strike him on the head? If not, secondly. Had he a right to do what he was intentionally doing—strike Joseph Hebring on the back or shoulders with the handle of the shovel, to force him to leave his brother. If he had such a right, then the accidental result was indeed a misfortune, greatly to be deplored, but it was only a misfortune for which Thomas was excusable. It was then a mere case of homicide *per infortunium*, as the law books call it.

Now, as to the first point, I have never heard any person hazard the belief or even suggestion, that Thomas Lafon purposely took Hebring's life, or purposely struck him on the head. At all events, the evidence of the state's witnesses is clear on this point, and needs no illustration from me. Mrs. Woodruff, an eye-witness, said, "The blow when delivered would have been received on the back had not the boy raised his head and turned it." Mrs. McCormick, who was close to the boys, said, "When he (Hebring) turned around and

raised himself up partially: his object appeared to be to see who was striking him; this action on his part brought him in the way of the third blow—changed his position and brought the blow on his head.” Miss Searing said, “The two first blows were on the back, then the boy raised and turned his head at the same time, and seemed to put his head in the way of the shovel.” These are the state’s witnesses. Other witnesses testify to the same effect, and there is no evidence to the contrary. If anything in the case is clear, this is: that the blow on the head was accidental, and there is no evidence of any intent to do anything more than to strike the deceased on the back to compel him to get off of Joseph Lafon. The prisoner himself, whose declarations have been put in evidence by the state, expressly states that to have been his object.

The question, then, recurs, had Thomas Lafon a right, under the circumstances of the case, to strike Hebring with the handle of the shovel on the back and shoulders, in order to compel him to leave his brother? I unhesitatingly and confidently contend that he had.

In the first place, I contend, as Mr. Parker has contended, that Thomas Lafon had the same right which his father would have had to defend and protect Joseph Lafon from the furious assault of Hebring; and his father, had he been present, certainly would have had the same right to defend and protect Joseph that the latter would have had himself. And surely neither of them would have been called in question for using the most vigorous means for compelling that stout young man to desist from beating Joseph. Are we to be told that a boy or man may not protect and defend his little brother when he sees him abused by an older and a stronger boy? That he must only interfere as a stranger would interfere, to prevent a breach of the peace? That he must crush the spontaneous feelings that rise to impel him to the rescue? If such is the law, it needs instant amendment. But I contend that it is not law. I contend that when the law says that parent and child, husband and wife, master and servant, and guardian and ward, may defend each other, it cites these merely as examples

of a general rule, that all persons in near domestic relations to each other may defend each other. Such, I think, is the spirit of the law, if carefully scanned. "As a general rule, whatever violence an individual may lawfully exert in his own defense, he may equally exert in defense of another person who stands in a near domestic relation to him." In the Hebrew law, it was the bounden duty of the brother to defend and even revenge his brother. He was the true avenger of blood.

But in this case, Thomas Lafon may be regarded as standing in his father's place. His father was absent from home. He was the oldest male member of the family present. As son and servant of his father, and his representative, he was bound to take his father's place. We claim this position for Thomas, because we think he is entitled to it, and because the law is not so strict in requiring a man to ascertain the cause of the altercation, or in exacting care and caution in the means used for his own defense or the defense of a child or other near relative, as where he interposes in behalf of other persons, merely to prevent a breach of the peace; and certainly no reasonable person could blame the father of the boy, or the boy himself, for raising the handle of a shovel, or any other instrument of the sort, lying accidentally at hand, upon the back or shoulders of the assailant, to compel him to desist.

But, in the second place, if not entitled to stand in like place as a father, Thomas Lafon, as a mere brother, was entitled to act on those sacred instincts which would prompt him to protect and defend his little brother; and was not called upon to exercise all that circumspection and deliberation which would be exacted from a mere stranger. The law is express on this point, and amply sufficient to justify the defendant in all that he intended and attempted to do.

In *East's Pleas of the Crown* (1, 292) it is said: "The nearer or more remote connection of the parties with each other seems more a matter of observation to the jury, as to the probable force of the provocation, and the motive which in-

duced the interference of a third person, than as furnishing any precise rule of law grounded on such a distinction."

What we justify is the assault with the shovel handle for the purpose intended; namely, the compelling of Hebring to desist beating Joseph Lafon. That being justified, the defendant is excused from the consequences of the unfortunate accident which resulted in the blow on the head.

The only question in the case which admits of the slightest hesitation is, whether the defendant, in effecting the purpose he had in view, was justified in using the weapon he did. The circumstances must be remembered. He was walking the room, he looked out, saw the butcher boy beating his brother, who was down on the hard pavement, beating him about the head and eyes, not softly, but violently. He rushes out, prompted by the most natural and justifiable instincts, with bare head, and nothing but slippers on his feet, he catches up the shovel, which lay there accidentally. He shows that he had no intention to use it in a deadly or dangerous manner, by taking hold of the handle, near the blade, the blade being towards himself. In that manner, holding as it were by the middle of the handle, he strikes rapidly with the end of the handle—strikes, not at the head, not at any vital part, but at the back and shoulders, protected by thick winter clothing. Had the case ended here, could a case of assault and battery have been sustained against him? Certainly not. And here was where he intended it to end. But, by chance, in the mysterious Providence of God, the boy raised himself on a sudden, turned his head against the last blow, and received the fatal wound!

All that the defendant did, or sought to do, was justifiable, lawful. The rest was accident—which all of us are liable to.

It seems to me that, if we properly distinguish between what was done by the defendant, and what was the result of mere accident, the jury cannot have a doubt that he ought to be acquitted. If he cannot be acquitted, then a father who reluctantly and affectionately attempts to punish his beloved child, but by an unfortunate accident, inflicts a blow that takes

its little life, is also guilty in the eye of the law. We beg the jury to remember, that we do not justify the homicide, but only the act which the defendant attempted to do; the homicide being accidental, was excusable.

And wherefore, gentlemen of the jury, should you convict the defendant? For any moral guilt? Certainly not. For any legal guilt? Certainly not, if I have stated the case rightly. Then what purpose can be subserved? You cannot bring back the spirit of young Hebring. That has fled beyond our or your recall. The defendant had no malice against him. He did not know him. Aside from any consequences to himself, he would gladly call him back to life again if, by any sacrifice he could make, he could do so. Will public justice be subserved by a verdict of guilty? Does the cause of good order require it? Justice and good order, gentlemen, are best subserved by a verdict according to truth and the law.

MR. TITSWORTH FOR THE STATE.

Mr. Titsworth. Gentlemen of the Jury: In the few words I may have to address you, I must in the beginning, crave your patience, for I shall endeavor, in very plain speech, to impress your minds and souls with the facts of this cause, as mine have been during this trial. The case has assumed an importance greater than that which usually attaches to criminal trials. The interest manifested by the community is deep and absorbing. The social position of the defendant, and that of the late deceased, have naturally excited this interest to a great extent. But let us, divesting our minds from all undue sympathy, or prejudice, for or against this defendant, seek to do what is only right, that justice may follow.

The learned counsel, who first addressed you in the defendant's behalf, called your attention to some cases of manslaughter, which he tried during the time he occupied the position I now fill. He omitted to call your attention to some other cases which he tried. I refer to the case tried here a few years ago, of the man who struck at another, but did not hit him;

the assaulted, in stepping back to avoid the blow, tripped and fell, and from that fall, was fatally injured. The learned friend on the other side prosecuted and convicted the man who aimed the blow for manslaughter. There was the case of O'Brien, the poor switch-tender, who, beyond question was perfectly innocent of any intent to do harm, with a conscience as pure as virgin snow, yet for a momentary neglect of duty, the train was thrown from the track, a human life destroyed, and O'Brien was tried and convicted of manslaughter. The law sets a high value upon human life. The Legislature will hardly change law to suit the learned counsel's notions of his client's cause. This has become quite fashionable of late, where the law pinches your client, to go to the Legislature and get everybody else pinched, so that your client is relieved. Never until now has it been claimed that to establish the crime of manslaughter, was it necessary to show an intent to kill. Killing may happen without any intent to do harm. If it happens through indifference, carelessness or neglect, or in the doing of an unlawful act, or in the doing of a lawful act, in an unlawful manner, it is manslaughter.

This sad tragedy has its first scene in one of the beautiful streets of our city. It was a beautiful morning. The town was joyous, as the merry sleighbells were jingling through the streets. Joseph Hebring, a youth, in passing through Cedar street, peaceably and properly, delivering from his wagon meat to his employer's customers, is assaulted with snowballs by the defendant's brother, Joseph Lafon. Counsel for the defendant says Hebring was the aggressor. I say Joseph Lafon was the aggressor. He commenced the affray by throwing snow at Hebring as he passed. He says he stood on the sidewalk, and threw snow upon his wagon as he passed through the middle of the street. Stickles says he afterwards threw a snowball and struck Hebring's horse, then hot words passed between them, and Hebring stopped his horse, jumped from his wagon, and came back to him. Where was Joseph Lafon then—out in the street. Why did he leave the sidewalk and go out in the street?

Was it to dare Hebring to a quarrel? He stood there until Hebring came up. Stickles says Hebring asked, "Why did you throw snowballs at me?" The Allen boy says the same. Lafon replied, "None of your d—n business." Mrs. McCormick and Miss Lottie Condit both say they then struck each other blow for blow. They clinched, Joseph Lafon says, he caught Hebring around the neck. If he had been so much smaller than Hebring, as is alleged, he could not well have taken hold around his neck. They struggle, stumble, and both fall, Hebring on top. Now, where was the defendant during this encounter, up to this time? Standing at the parlor window looking at the affair. He manifestly saw the whole of it. Joseph Lafon says in his testimony before the Coroner's Jury, that his brother saw him throw the snow at Hebring. Miss Condit says she saw him looking out of the window, while the boys were struggling. Miss Searing, from an upper window on the other side of the street, saw him looking out. So that the defendant knew that his brother was the aggressor, and had provoked the quarrel—but when he saw his brother getting the worst of it, he then rushed out of the house to punish his adversary. Was Joseph Lafon so much weaker than Joseph Hebring? There was but little if any difference in size. Dr. Dennis said as he saw them struggling together, he thought, it was a "little boy's quarrel." Was Joseph Hebring "a skillful fighter?" Counsel says he was trying by his blows to put out Lafon's eye.

"A skillful fighter!" "Skillful fighter!" Think of that, gentlemen, and call to mind the evidence of his skill. There lay the boys, Lafon on his back, face up, Hebring over him on his knees, his left knee pressing upon Lafon's right hand, holding it down—his left hand holding tight Lafon's left hand, and with nothing in his way, Hebring with his right hand, by blow after blow, hard and heavy, aiming at Lafon's eye. trying to put it out. What hindered him from hitting his eye? Did he hit his eye? "Trying to put his eye out," cried counsel, and yet with all this excellent opportunity, having Lafon at such an advantage, this "skillful fighter" does not

even hit his eye—does not blacken it—does not make the nose bleed—does not raise a mark, or make a scratch upon any part of Lafon's face. Lafon in this situation, according to his story, hit in the face before he fell, and a great many times after he fell, and that by a "skillful fighter," and not a mark, scratch or bruise made upon his fair face. "Skillful" fighting that, well up in the art of the ring. Doesn't the bare statement of the facts show the absurdity of counsel's allegation? O yes, "his cheek was red." Mrs. Hornblower, who came out, saw he had been struck in the cheek, because she saw a redness, and she knew he had been struck, because it was the same peculiar redness of cheek which she had noticed in the cheeks of her own boys, when they had been struck in the cheek.

Isn't that cheeky evidence, gentlemen? I do not wish to say anything unjust against this lady, but when she, a highly respectable person, comes before this jury and tries to prejudice it with her presence, I feel it my duty to characterize her evidence as it deserves—as if all the shoveling and snowballing, and struggling would not cause a redness of cheek. And that was the sum of his injuries—a red cheek. Joseph says his cheek was swelled; nobody else says so. He says his arms and shoulders were lame, but he never told his father, a physician, or Dr. Dennis, who were about the office all that day, of any injuries of face or arms, they never examined his injuries, or prescribed for them. All he did for his swelled face was to bathe it in cold water that night, as he went to bed, and the next morning it was all right. Had he been like most respectable boys, he would have bathed it in water at noon time and tea time also. Making out that Joseph Lafon was hurt, and that there was an urgent necessity for intervention, so as to prevent the younger Lafon from being killed, was the aim of the defendant's counsel. After the affray, he resumed shoveling snow, and was out in the street three-quarters of an hour, relating to different ones what had happened, and then got his cue from his own house, and went over to play croquet with Fred Fish, on his table; and the reason he did not play, was because Fred Fish didn't want to play. Lame arms in-

deed! Badly injured boy that! No, Thomas Lafon, seeing all this affray from the beginning, and seeing that his brother was not injured, what was his object in attacking Hebring with the shovel. When he came out, did he ask his brother if he was hurt? Did he tell Hebring to get up, or did he attempt to pull him off, or kick him off? No, nothing of the sort. He knew his brother was not hurt—he did not stop to help him up after he had beaten Hebring, he left his brother as he found him, and ran back in the house.

Now, I shall endeavor to show, first, that the defendant's object was not to protect his brother. Second, it was to punish Hebring. And, third, in doing so, he used unlawful means. Now if I succeed in maintaining either of these propositions, which I propose to discuss together, then the defendant is guilty of manslaughter. Both of the lads who were engaged in the quarrel at the time of his interference, were blameable, and Thomas Lafon knew it.

Now, did Thomas come out to lift his brother up and see fair play? No, he came out, rushed into the street, picked up the shovel, and struck the fatal blow. I do not deny that it is the duty of a brother to defend either a brother or sister from dishonor, or from imminent peril: but this is no such case. Counsel says, why did he not hit him with the blade, the edge of the blade, if he meant to kill him? Witnesses differ as to the part of the shovel, but I think he was struck with the handle. Why, gentlemen, if he had struck with the edge of the blade, the shovel would then have been a deadly weapon, and in law there would have been much malice manifested in that act, that he should have been indicted for, and now be on trial for murder in the first degree. But they say he did not mean to hit him on the head. When the last blow was struck, the contest between the boys was certainly at an end, and Lafon had no right to hit him at all. Suppose he did not mean to hit his head. If he struck heedlessly, recklessly and wilfully, a fatal blow, is he not guilty? The manner in which he struck is proof that he meant harm; all the blows were struck about the head—they were heavy blows, given in

quick succession; and when Hebring looked at him, and eye met eye, he meant to hit him on the head. But whether he did or not is of very little consequence under this indictment. That he struck him, and by the blow caused his death, is not denied—that he did this, without right or law, is my claim. The blows were all heavy, qualified by the witnesses, it is true, as rather heavy, pretty severe, hard blows, except Miss Searing; she thought Hebring "was making believe, heard his groans, saw the blood from his ear, saw him attempt to rise, and fall again and again, and thought he was making believe." O! I am sorry; sympathy goes far. Miss Anna Poor, looking through a second story window of the adjoining house (Dr. Dennis' room, she is a sister of Mrs. Dennis), saw the upraised shovel three times, but could not see what it struck, but she heard the blows, the first two sounded like something striking heavy, and the last, like striking the sidewalk. This was in the morning, the streets noisy with the hum drum of busy life, and she heard this some distance, through a closed window. Joseph Lafon said the last blow sounded like striking hardwood. Talk about thin skulls. Men of common sense know that shovel, in the hands of a man accustomed to farm life, brought down upon a lad's head so hard that the blow could be heard in the closed second story of an adjoining house, and sound like hitting a sidewalk, would break the thickest skull. We do not need experts, to tell us about thin skulls; medical books are of little worth. The facts are stronger than opinions or theories. The fracture—what a fracture! It runs down the temporal bone, the momentum carried it through the solid ear bone, one of the firmest in the body, according to Dr. Lehlbach, and this solid bone two and a half inches thick, was cracked through. Now, this bone turned across the temporal, must act like a knot. The blow must have been very heavy, that would split this knotty bone.

The sight of the affair was alarming, even to the colored boy, Talmadge, who is probably accustomed to hard sights—he could not stop and see more of this thing—he drove on. The people in the streets are alarmed with his distressing cries

—the ladies who witnessed it are filled with consternation; but the defendant is unconcerned—his ears are deaf to the cries of distress—he has accomplished his purpose—he has punished his victim, and gone back into his house. He can stand at the window and look out upon that poor boy, bloody from his cruelty, but he has no hand to help him whom he has crushed. Call it accident! Why does not he come out? What is he? Is Thomas Lafon sacred, and Joseph Hebring the opposite? Why does he not rush to the assistance of poor Hebring? O! talk to me about accident! Why, gentlemen, if he had not intended to do just what he did do, when he saw that he had hit him on the head and done him great harm, he would have fallen upon the poor boy's neck and asked his forgiveness. He would, with many tears, have lifted him up, he would have told him, my dear boy, I am sorry I have hurt you—I hope you are not much hurt—I will do all I can for you—let me help you. No place in his father's house would have been too good for him. Would not that have been human nature, if this was an accident? But instead he leaves him upon the cold sidewalk, to moan and cry, and strangers come to his aid. And even now, when they would carry him up the wide front steps to his father's office, in the rear of the parlors, they are met at the door, as they ascend the steps, and told to take him back and down the narrow basement steps, into the narrow area way, to the basement door.

Gentlemen, the intention of the defendant is to be gathered from his acts and words at the time and immediately after the occurrence. I dwell upon these things that we may understand his intent. “True, he has been hurt by my son—he has just told me about it—but take him down to the basement. We have just cleaned this part of the house—the Saturday cleaning has been done—the house must not be soiled—he is only a market boy.”

Mrs. Lafon says Thomas was helping him up the steps when she told them to take him down into the basement. She is mistaken. The evidence is that Stickles and a stranger helped him. Thomas did not go out. She might have thought so,

but he did no such thing. All the neighborhood had been alarmed, before the boy was taken in. If he had no intention of doing grievous harm, why did he not drop the shovel and at once extend his aid. I ask Dr. Stearns if that would not have been the prompting of a Christian heart?

Well, he was taken into the basement, and his head examined. Now I am bound to talk plain. Dr. Lafon is my friend, as Stephen Hebring is my learned opponent's friend. I do not desire to wound my friend's feelings, but I must do my duty. O, there was such a coldness about this affair—such a heartlessness—such cruelty.

What was the purpose of Thomas Lafon, I ask again, in giving these blows? When he had knocked Hebring in the head, did he stop to ask his brother if he was hurt? No. Did he offer to help his brother? No. But he had injured Hebring, and that was his intent. Counsel says, "Thomas wanted to equalize the power," that "he had a right to equalize the powers." Equalize the power indeed! Two lads of about the same size are engaged in a street quarrel, and a young man, larger than either, weighing nearly as much as both, comes along and attacks one of them from behind with a shovel, to equalize the power. That may be a good proposition for natural philosophy, but there is no room in the law or in common sense for such an absurdity. And when the injured boy was taken into the basement, what feeling, sympathy or sorrow did he manifest?

Did he tell his mother it was an accident? Did he tell her or anybody that he did not mean to hit him on the head? But he did say to Dr. Dennis, as he came into the basement, "Here is a boy badly hurt." Did he say accidentally hurt? Would he not have said so if it had been true, right then and there, when the blood of the moaning boy was dripping warm and fresh from his ear, there in the presence of his mother and the doctor? Then what did he do? What did they, this household, do, to help this boy, injured by accident, as they now say? Did any of them believe, or even think, then, that there was any accident about it?

George Burgesser comes, sent by Mr. Bathgate, to learn the condition of his comrade; he sees blood upon the sidewalk, he hears his groans and sees his drooping head through the basement window, but he is not allowed admittance. Returning, the second time, with more positive commands from his employer, he again seeks admission, and they say he came "boisterously," "boisterously!" "boisterously!" Why, he is naturally excited. He feels, if no one else about that house does, for the fate of his young friend and fellow workman. He fears, from the terrible evidence he has seen, the worst has befallen him. "He came boisterously!" O, gentlemen, is this a time to stand on etiquette? Is this a time to ask for bows and scrapes, and flections and genuflections, and good morning salutes before he can be allowed to aid the suffering one?

See here an example of the liveliest regard for good manners smothering heartless attention to suffering. Why care for Burgesser's manner—he feels—he sees—he hears—excitedly, perhaps, he asks, if he can take him away. Is he able to go? Yes, yes—take him—get him out of here as quick as possible.

Thomas says, he is badly hurt. The doctor sees he is wounded, but how or where, he knows not, and seems not able to ascertain, but the blood flowing from his ear should have been evidence to him, a physician, that the blow upon the head with the shovel, which he saw lifted high in the air but a few minutes before, that the injury was serious. He said he must be warmed at once, and yet they allow him to be carried out into the cold, and that to the very coldest and most uncomfortable place for an injured person, in the whole city—the center market. What chance for attention there—how can he be warmed in that cheerless place, with cold drafts from every direction? But take him—take him out—take him away from here. I, Thomas Lafon, have wounded him, they now say by accident, but there is no room for him here, no comfortable bed or lounge, or warm stove, or heated brick, no, not here. He says he has a mother, why could he not stay there a little

while in the basement, it wouldn't soil it much, and send for his poor mother? No, no, he can't stay here, take him out, and Thomas Lafon, assisted by George Burgesser, carried him out, tumbled him into the cart, with the cold dead meat, the poor boy has not yet delivered. He is only a butcher boy! And Dr. Dennis lets him go, without the care of a physician. Why couldn't he go and see him safely lodged in some warm place, which he says, he above all, needs. O, gentlemen, if this were a son of mine, or a son of yours, would not charity dictate that he be left awhile? Why not care for him tenderly, and send for his mother or some one who loves him? Was this an act of Christian charity, and amiable loving kindness, of which we have heard so much in this trial? An accident! and treat humanity thus! An accident! Did Hebring receive that care as if injured by accident? About the same as would have been bestowed upon a wounded dog.

O! Christian charity! Amiability of temper! Don't let us hear any more of it in this case. Well, Thomas drives the meat wagon over to the market and George Burgesser supports the wounded Hebring. What did Thomas on the way say to George Burgesser? That he was sorry, he did not mean to hit him so hard, or that he accidentally hit him upon the head? No, no, nothing of that sort. "I wasn't going to see my brother licked," "I didn't want to see my brother getting beat of him,"—a German mode of expression—and that is all he said. Then we come to the market. Here Thomas has another opportunity of explaining himself. Does he say or intimate to Bathgate that he hurt him by a mishap, or unintentionally? Not at all. He says to Bathgate, "I hit him with a shovel, I did it, and I am responsible for it. You would hardly expect this of me." And when Bathgate importunes with him to take him back to his house, and make him comfortable there for the present, he refused, and insisted upon taking him home in the meat wagon. Many people in this town knew Joseph Hebring, and it is no wonder that Mr. Bathgate told Thomas to get a carriage and take him home and not allow him to be tumbled about in a meat cart. Then

it is intimated to him that he would be arrested, and he replied he might go to the Station House himself. Why didn't he say, "This is an accident, I didn't mean it, I have committed no crime?" I tell you, gentlemen, this idea of misadventure was not then thought of, not until counsel had been seen and their learning and ingenuity was put to the rack to devise a defense, based upon the "seemings" of some of the witnesses to the occurrence.

Dr. Dougherty is called. He pronounces the boy seriously injured. Advises him to be taken where he can be warmed at once. Thomas Lafon brings a hack, and he and the doctor proceed to take poor Hebring home. Again does the defendant have another opportunity. Remember, gentlemen, we are seeking after intent on the part of this defendant—the *quo animo* of the deed. They say accident. We say intent. On the way he speaks to Dr. Dougherty. "I know you will think it is a beastly thing—or brutal thing to do—I saw him on my little brother and I went to get him off." Significant words, How they throw light, as from a blazing sun, upon this sad tragedy. The doctor had given him to understand the injury was serious. He appeared to be sorry and apprehensive, but the way he conveyed the idea of sorrow to the doctor's mind, as he says, was by his showing alarm. Ah! he had just heard the word at the market—arrest. Now he begins to feel alarm, but is there in any expression to the doctor or in his manifestation of alarm any intimation that he did not mean the blow upon the head. His own conscience characterizes the act as "beastly" or "brutal." It was brutal, cruel in the extreme. And now the scene in this terrible tragedy changes again. The defendant, bearing the victim of his brutality, is confronted with Hebring's mother. At the door of her house she sees the defendant and the doctor aiding her dear boy. He is laid upon the lounge, the doctor gives necessary directions; and there stays the defendant for half or three-quarters of an hour, and during all this time he has another opportunity to explain. Does he? He talked with the mother. Did he tell her, "I injured your boy by accident—I am very sorry—I

will do all I can for him—let me know what you want and you shall have it?" No, no. No words of hope, cheer, or consolation or sympathy. He asked a question pregnant with meaning: "How many children have you got?" as if he knew she would soon have one less this side of the eternal gate. "How many children have you got?"

This community asks today of this afflicted woman, how many children have you now? and where is your bright, promising Joseph? And I ask of this defendant—where is Joseph Hebring?

Ah, counsel says. "He was protecting his brother, and God expects a brother to protect his brother, for he asked Cain, 'where is thy brother Abel?'" Be it so, gentlemen of the jury. Cain and Abel were early representatives of the human race. Brother, in this connection has a deeper, wider meaning than that of near blood tie. It is brother, in the sense that we are all children of one common Father. And in this sense God has asked every Cain, or manslayer, from that day to this, "Where is thy brother?" And God asks today of Thomas Lafon, "Where is thy brother, Joseph Hebring?"

Call this brutal deed, accident! Accident! Then strike brutal and cruel out of the language, as obsolete words, and use accidental instead. So much for that branch of the defense by misadventure, or accident.

Now, by his counsel, he asks this jury to justify him, on the ground that he had a right to defend his brother, and that he was only doing that. If it was right for the defendant to defend his brother, as I concede it was, to do it, there was a right way and a wrong way; he took the wrong way. Just as in the case referred to of the falling house, there was a right way to prop it up, and a wrong way—the builder took the wrong way—a child was killed, and it was held manslaughter.

His learned counsel account for his cold and unfeeling manner after the affray, on the ground that he is a doctor's son, and used to such things. They feel the smart, and apply such a plaster. I leave that explanation, hardly worthy of my learned friend, with you, gentlemen, for what it is worth. But

I would like to ask Dr. Stearns, or Dr. Poor, who have taken such deep interest in this trial, if they or either of them think it right for one of their parishioners to exercise his furious temper, which they call amiable, as the defendant is proved to have done in this case—strike repeated and heavy blows, about and upon the head, prostrate him upon the sidewalk, and leave him there seriously wounded, without a care. Didn't he have an evil heart, when he struck those blows? Talk about moral guilt! Was not moral guilt there? All the provocation that Thomas Lafon had, was, that his brother was fighting with Joseph Hebring, and as he knew how the fight commenced, and had seen its progress from the beginning, there should have been little in it to provoke him to this rash and cruel deed. He did not have the same provocation which his brother had. If his brother, while lying upon the sidewalk, had seized some instrument, and with it given Hebring a mortal wound, Joseph Lafon would have been guilty of manslaughter clearly so. Thomas certainly cannot escape the consequences which would have befallen his brother, had he killed Hebring.

The learned counsel on the other side would have us believe, that the defendant had no malice in what he did. Why, gentlemen, it is not necessary that malice should be proved, to maintain the offense of manslaughter. This indictment is not founded upon malice. If malice appeared in the acts of the defendant, he might have been indicted for murder. It is not urged on the part of the state, that he committed this deed maliciously, for the purpose of maintaining this charge. But the character of the deed has been inquired into to ascertain the motive of the defendant. Malice divides murder from manslaughter. I here submit to you as I did in the opening of this cause, if it was not a merciful Grand Jury that found this indictment, take the facts as they stand proved before you, and tell me did not the Grand Jury give this defendant the benefit of all the doubts he can reasonably ask, in finding this indictment for manslaughter rather than murder; and though it may appear upon the evidence that he had malice

in his heart, he can now be convicted of manslaughter only. I ask you now, gentlemen of the jury, what was the object of the defendant when he struck these blows? Was it to protect his brother, or punish Joseph Hebring? Was there such an urgent necessity, even appearing to him, as he looked from the window, as to justify him in the seizing of this weapon, and using it in the brutal manner proved? It has been somewhat difficult for me to understand what counsel for defense, with their great learning and ability, have aimed at, or relied upon for an acquittal. At one time they say it was an accident, a misadventure, then they jump that defense and say defendant was justified, because a brother has a right to protect a brother, and intimate, they have hardly dared to say it, that Joseph Lafon was in such imminent danger, that Thomas had a right to use the shovel and beat off his assailant with deadly blows. Human life has never been held so cheaply as this in New Jersey. Joseph Lafon was not hurt or scratched even, by this encounter—their attempt to prove injuries utterly failed. This stout defendant, hardened and strengthened in muscle by his farm life in Missouri, could easily have pulled off Hebring, and tossed him in the middle of the street. If protection alone had been his object, this he would have done, and not tried to beat out his life. I submit, therefore, in all candor, that the propositions with which I started upon this argument, are wholly supported by the proof. That is, the defendant's object and intention was—First—negatively—not to protect his brother. Second—affirmatively—it was to punish Hebring. And in the third place, that he used unlawful means, and his manner of interference was unlawful. He should therefore be held responsible for the consequences of his acts.

They tell us his character has always been good—and ministers and doctors, and lawyers, have been called to testify to his peaceableness and good temper. With all their opinions of his high character, the facts in this case are not obscure. One not of a quick and ungovernable temper, of strong passions, easily excited, would never have struck those horrible

blows. And, after all, they know very little about him of late. For several years he has been away from home, and the most of them have seen little or nothing of him. He may not have shown much violence of temper among his companions in earlier years, or in the presence of his pastor, who has great kindness of heart—aye, kindness to a fault, as is manifested by his interest in this trial. He doubtless thinks the defendant free from guilt, and strange it is with such facts before him—his head seems buried for the time in his heart.

This occasion called out temper in the defendant, the evidence is clear, and though he may never have allowed it to carry him so far before, that can be no defense upon this charge.

Now as to the defense that he was justified. Homicide is justifiable only when it is impossible for the one attacked to retreat further, and the danger is imminent. Joseph Lafon, by falling to the ground, did not “retreat to the wall,” and could have made further resistance. In homicide by misadventure, there must be no intention to commit bodily harm. There was a brutality in this attack upon Hebring that no law can excuse or justify. Then such a cruel, cold, heartless treatment of the poor boy, after the injuries were inflicted! What says that good Christian poet, Cowper:

“I would not enter on my list of friends
(Though graced with polished manners and fine sense,
Yet wanting sensibility) the man
Who needlessly sets foot upon a worm.”

And again he uses these appropriate words:

“The spring time of our years
Is soon dishonored and defiled in most,
By budding ills, that ask a prudent hand
To check them. But, alas! none sooner shoots,
If unrestrain’d, into luxuriant growth,
Than cruelty, most devilish of them all—
Mercy to him that shows it, is the rule
And righteous limitation of its act,
By which Heav’n moves in pard’ning guilty man:
And he that shows none, being ripe in years,
And conscious of the outrage he commits,
Shall seek it, and not find it, in his turn.”

But I must not weary your patience further. In conclusion, I wish to call your attention to one or two matters, made necessary by the appeal of the learned counsel for the defense. I confess to a fear of their power. They have brought their great learning, abilities, and matchless eloquence into requisition to acquit this defendant from the charge laid against him.

I have sought to lay the case before you with some care. As God is my judge, I have been impelled only by a solemn sense of duty. I would that this defendant could be relieved from the consequence of his crime; but the security of the state, the protection of the people, forbids it. Courts are established to protect communities. The fountains of justice must not be choked by sympathy. The defendant, they say, has been reared with religious care. It may be so. I am not here to send grief to the hearts of his parents, but to ask for simple justice.

Deliberate a moment on this one thought. If Joseph Hebring was in Thomas Lafon's position, and the latter where I hope young Hebring is—in Heaven—what would these parents and these sympathizing friends say then? Has not the law been violated? and though ever so well nurtured, should he not be treated as the law treats all? Courts of justice can not afford to respect persons. You remember what Moses said to all Israel, on this side Jordan, in the wilderness: "Hear the causes between your brethren, and judge righteously between every man and his brother and the stranger that is with him. Ye shall not respect persons in judgment, but you shall hear the small as well as the great. You shall not be afraid of the face of man, for the judgment is God's." Thus, judge all aright.

I appeal to you, on behalf of the people of this county. Because a man has always appeared respectable, it does not follow that he should not be held guilty of crime, fully proved against him.

Can the defendant say to you, that because he has been reared in the lap of luxury, and had every advantage of soci-

ety, schools and church, that he should not abide the consequence of his misdeeds? You cannot recall the lad upon whose growing strength his parents depended for support in their declining years; and although we are not here for revenge, you may do something, by your verdict, to protect others in our midst, from a like sorrow. You can set up a beacon light as a warning to the wayward.

If the actors had been reversed, would your duty have been different? Oh, no! Let this poor mother, who has sat here alone in her dark weeds of mourning, know that justice will be done. Let this community know that you will do justice. I know you are moved with sympathy, but I know you are men actuated by high and honorable purposes, and will dare do your duty.

This man should be tried and judged as are all others arraigned before this bar. Let there be no distinctions. It is our boast to say that in our courts of justice all stand alike—the rich and the poor, the native and the foreign born. Let it be shown that it is true, so that we may continue to enjoy the reputation we have heretofore so well merited. And here let me say that this reputation has been largely owing to the great power and unbending integrity of my learned friend on the other side who so ardently opposes me in this case, when he stood for ten years in my place. Where would we drift to if the courts are partial in their judgments. If this man has done wrong, let your verdict convict him. You are asked by counsel on the other side if you would have his locks shorn, a prison garb throw upon his person and he forced into a felon's cell. To consider the effect of your verdict against him in this regard. Gentlemen of the jury, were you sworn to do that? The facts and the law are our guides, not consequences. With consequences, I, as prosecutor, and you, as jurymen, have nothing to do. The judgment of the law upon a verdict of guilty will be for the very learned and conscientious judge, and his honorable associates upon the bench, to pronounce—that part of this case is not ours to perform, or even to consider, and it may be left to them safely, for they are just men.

But counsel asks, will you shut him up in an ignominious place where sin alone enters? I answer yes, yes, a thousand times yes, rather than that he, if guilty, should be acquitted because he is Dr. Lafon's son. Will you say that violence in our streets, such as this, shall go unwhipped of justice. What dire disasters may befall us, if such conduct is to be justified by jurors.

I only ask for justice in this case as in all other cases, it is sought by the prosecution, nothing more is asked—nothing less will satisfy. Let all know that here the poor is as strong as the rich, and he who has no friends as strong as he who has many. The law is the same for all classes and all nationalities. The American—the German—the Irishman—the Italian—the Frenchman, and the inhabitants of the islands of the sea in this court, all stand upon one common level. So it has been—so may it ever be and shall be, so far as my feeble efforts can tend in that direction. I know with what power I have been opposed, but facts are stronger than theories—justice is stronger than eloquence, and duty is stronger than sympathy. “When I am called to pity the criminal,” said that eminent Christian, Chief Justice Hale, “I remember that there is a pity due to the people.” I would that this defendant had shown some defense by which you would have been justified in a verdict of acquittal; but he has not. Deliberate upon this case with calmness and candor; take the facts as they have been put in evidence before you, and the law as his honor shall declare it to be, and consider seriously, without sympathy or prejudice. And may God bless you, and keep you, and direct you aright, and enable you so to discharge your solemn duty that the people will say faithful; your own consciences will say faithful, and the Judge upon the Great White Throne will say, as you finally enter up yonder—faithful.

THE JUDGE'S CHARGE.

JUDGE DEPUE. The defendant is on trial upon an indictment charging him with manslaughter in causing the death

of the public peace is a right which pertains to the citizen, springing from his obligations to the law, and his right, as a member of society, to maintain the public peace and prevent the commission of crime. In some cases the distinction is important. If this case, under an indictment for manslaughter, the distinction is entirely unimportant. But whatever be the origin or foundation of this right, it is carefully guarded by qualifications and restrictions, and the stranger to the combat, who interferes, and steps beyond these qualifications and restrictions becomes involved in a criminal responsibility for the consequences of his act, and if death ensues from his act of interference, the law, from its regard for human life, holds him to a strict accountability.

The conditions to a justification of this character are these :

1. That the motive for interfering was a laudable and proper motive, and not for the purpose of engaging in an affray ; and
2. That in this prosecution of his purpose the force which he used was appropriate to the prevention of bodily harm, and was not carried beyond the bounds of what was reasonably necessary to that end.

If the defense fails in either of these particulars, either as to the motive for interference, or the extent to which such interference was carried, the defendant should be convicted.

And first, as to the motive for interference. In this branch of the case, the relations existing between the defendant and the person with whom the deceased was engaged in a contest, and the extent to which he was informed of the merits of the controversy, have an important bearing. In the language of an authority read in your hearing (1 E. P. p. 292) : "The nearer or more remote connection of the parties with each other seems more a matter of observation to the jury as to the probable force of the provocation, and the motive which induced the interference of a third person, than as furnishing any precise rule of law grounded on such a distinction." It is said that strangers interfering in a mutual combat or in behalf of another, must use great caution, and that before their interference is actual they should make known the purpose of

their interposition. That principle does not apply in this case. The natural instincts of the defendant would prompt him at once to fly to the aid of his brother, whom he saw worsted in the scuffle. The motive of the defendant in interfering was natural, and if it was not on his own account to join in the affray to punish the deceased, was justifiable. But that does not make perfect his defense. His conduct, while interposing, must have been such as to justify the acts he did in the prosecution of his interference. The assailant, as well as the assaulted, was under the protection of the law.

It is in the second condition to the perfection of this defense that the burden in this case chiefly lies. Was the force used appropriate to effectuate the preservation of his brother by rescuing him from his assailant or shielding him from injury? And was it confined within the limits of what was necessary to secure that protection?

Directing your attention to the distinction between murder and manslaughter, will aid you in comprehending the exact bearing of this, the essential part of the defense, upon the indictment on which the accused is upon trial. If the intention be to take life or inflict grievous bodily injury, the offense is murder either in the first or second degree. If the intent does not extend to the intention to take life or to inflict great bodily injury, but was to commit a mere assault and battery upon the person of the deceased, if death ensues, the offense is manslaughter. The defendant is on trial on a charge of manslaughter.

The distinction to be observed is between provocation and justification. Provocation will, in some cases, mitigate the crime from murder to manslaughter. Nothing short of a justification by maintaining that the act done was in itself a lawful act, will absolve the accused from the charge of manslaughter. In a book of acknowledged authority the rule is stated accurately as follows: "In general, where an involuntary killing happens in consequence of an unlawful act, it will be either murder or manslaughter, according to the nature of the act which occasioned it; if it be in prosecution of a

felonious intent, or in its consequences naturally tended to bloodshed, it will be murder; but if no more was intended than a mere civil trespass, it is manslaughter.'—(Wharton's Homicide, p. 36.)

The subject being considered by the author, with reference to which these remarks are made, is that of involuntary manslaughter, where death unexpectedly results from the act of the accused—the precise question which is involved in this case. You will perceive from the extract I have read, that in order to a conviction it is not necessary that the state should satisfy you that the fatal blow was purposely delivered on a vital part where it was likely to be attended with dangerous consequences, with an intent to cause a grievous injury. It is sufficient that you should be satisfied that the purpose of the accused was to commit a trespass on the person of the deceased. If you are satisfied that his intent was to commit a trespass, then the merits of the defense must consist in satisfying you that he was justified in committing the trespass—the assault and battery he committed on the person of the deceased.

Whether the attentions to the deceased, after the injury, were such as they should have been, is of no importance in this case, except so far as it relates to the conduct of the accused, as bearing on the question of his intent in committing the assault. He was not the master of the premises. The case stands on the question of justification.

These facts appear not to be disputed: that, on the morning in question, Joseph Lafon, the brother of the accused, and the deceased, became engaged in a personal altercation; that Joseph was thrown upon the sidewalk, and was lying there, with the deceased on or over him; and that the accused hurried from his father's house, to the place where the parties were, and without one word of expostulation, or any effort to disengage the parties, proceeded to deliver on the person of the deceased three blows, with a shovel he had picked up by the way, in quick succession, from the last of which death ensued.

Were these blows justified, as being necessary to the preservation of the public peace, or the protection of Joseph from the assault that was being made upon him?

The testimony bearing on this subject is quite conflicting, and therefore I do not refer to it in detail. Briefly it relates to the following points: 1. The character of the assault, which was then being committed on Joseph by the deceased, as evidenced by the degree of force he was at that time actually applying, and the nature and extent of the injury (whether slight or otherwise) sustained by Joseph, as exhibited by the appearance of his person after the occurrence, and his personal suffering from any injuries he may have received at the hands of the deceased, and the comparative size of the two persons who were in the altercation. 2. The manner in which the blows given by the accused were inflicted—the force which was used—and the manner in which the shovel was held. On this point, as to the force, you have the descriptions of the eye witnesses, the testimony of Drs. Dougherty and Lehlbach, and the effects on the person of the deceased.

The weight of the evidence is that the accused struck with the handle of the shovel and not with the blade. Was the occasion so urgent that the accused was justified in at once resorting to the force he used, and was the danger so imminent that the blows given were proportioned to the urgency of the attack? Was he exercising a lawful right, in a lawful manner, or did he participate with the intent to assault the deceased for the purpose of inflicting punishment on the deceased?

The part of the person at which the blows were aimed and upon which they were intended to have been delivered, is not to be overlooked by the jury in passing upon the question as to whether the force used was excessive, and beyond what was reasonable and lawful under all the circumstances of the case.

As I have already said, the fact that the death unexpectedly resulted from his act will not of itself relieve the accused from the consequences of his act. But when the question is whether the act is a lawful act, because of the exigencies of the occa-

sion, the nature of the weapon used and the part of the body at which it was aimed, become matters of importance. If a man uses a weapon likely to cause serious bodily injury upon the person of another; if by misadventure it alights on a vital part and death ensues, he is liable for all the consequences resulting from the act. If the accused used the weapon intentionally upon a vital part, or if he intentionally used a weapon likely to be attended with serious consequences, he must be held to be responsible for all the consequences of his act, though he apprehended no such consequences at the time of delivering the fatal blow. In that case the offense would be murder at least in the second degree.

The element of misadventure in the consequences resulting from the act, is entitled to just this effect in this cause. If the weapon used, under all circumstances, when used upon the person of another was not likely to be attended with serious consequences, that circumstance is entitled to a careful consideration by the jury, under an indictment for manslaughter in causing death in the use of such weapon in measuring the amount of force to be justified in repelling the force of the deceased. In other words, the justification must be the extent of justifying the act intended to be done and the use of the weapon he intentionally used. The question is not solely one of intent. If a person uses a weapon, likely to occasion great bodily injury, he must be responsible for the consequences resulting, although he did not intend that result. If a person, either in the interposition for the rescue of a third person, or in self-defense, uses merely his hands, and by misadventure, death ensues, the question of his justification is to be considered in the light of the means of offense used and the part of the person on which those means of offense were intentionally applied. So, if he uses a weapon which, when used on any part of the person, is likely to occasion serious injury, he is responsible, though undesignedly or by misadventure the blow was received on a vital part of the person, whereby death unexpectedly resulted. I repeat, that in the justification of the assault committed on the deceased the justification must

be co-extensive with the act intended to be done and character of the weapon intentionally used.

If you find that in these respects the defendant was justified—that is, in the act he intended to do and the weapon he used—excuse for the unexpected result will follow from that justification, if the accused is free from all blame as to the manner in which he used the weapon.

On these points, gentlemen, you ought to be entirely satisfied. If a person doing an act entirely lawful employs means likely to be attended with dangerous consequences to others, he is held to the exercise of due care. It would never do to visit upon the sufferer the consequences of an unforeseen and unexpected result, and hold him alone responsible for the unexpected consequences resulting from the means adopted by his assailant. The party employing means which may occasion such dangerous consequences, must himself be free from all blame for such unforeseen and unexpected consequences.

Was the fatal blow intended to be delivered on the head of the deceased, or did the deceased, by shifting his position, receive on his head a blow aimed at his back? You have the testimony of several witnesses on this point. You have also the fact introduced that the blows were delivered in quick succession. It is for you, gentlemen, to determine from the evidence whether the accused continued to repeat the blows on the back of the deceased, or whether he shifted the point of attack from the back to the head, and the deceased by simply inclining his head on one side received the blow on the temple.

If you conclude from the evidence that the blow was not aimed at the head, then it will be a matter for consideration whether the instrument used was a dangerous instrument. To constitute a dangerous instrument, it is not necessary that it should be a knife, or a sword, or a gun. A club, a cart rung, or any instrument capable of inflicting severe personal injuries, is a dangerous instrument. Whether the instrument used in this case was a dangerous instrument, is a question for the jury, in the view of the injuries capable

of being caused by it, and the manner in which it was used.

After you have determined these controverted questions of fact, then, gentlemen, turn your attention to the consideration whether the acts done by the accused were lawful acts; whether they were justified in the preservation of the public peace, in the protection of the person of one who was assaulted by another from the violence of his assailant, either in their adapt-
edness to that purpose, or in the extent to which the force applied was carried. On this subject, when the taking of life has resulted, you ought to be entirely satisfied that the grounds upon which you proceed are grounds upon which the peace and good order of the community may safely rest. It is said in judging of this question you are to have regard to the condition of things as they reasonably seemed to the accused at the time, rather than as they actually were. On this subject I adopt the remarks of a Judge in a neighboring state in construing a statute, which I think correctly defines the law on this subject:

"It is argued, however, that if the prisoner did apprehend a design on the part of Brush to do him some great personal injury, and believed he was in great danger, he had then a right to act upon that belief, and take the life of Brush, although there was no actual imminent danger. In other words, if he believed in the danger, he had a right to act as though the danger was actually present, and the injury about to be inflicted upon him, and that the consequences of this mistaken belief must fall upon the deceased, and the prisoner must, in the eye of the law, stand entirely justified. Several particulars are to be noticed in this section as applicable to the present case. The homicide, if justifiable, must have been committed in the lawful defense of the person of the prisoner at a time when there was reasonable ground to apprehend a design to do him some great personal injury. Who is to judge of the reasonable ground to apprehend a design to do injury? The grounds must be made to appear on the trial, and the jury must be satisfied that they were reasonable grounds upon which to found an apprehension of a design to commit the felony or to do some great personal injury. It is true the party assailed must at the time judge of the ground for his apprehension, but he judges and decides at his peril, so far as the question of entire justification is concerned. It will not do to hold that he who has taken the life of another is entirely justifiable when he acts upon unreasonable grounds of apprehension, though he may have acted upon

an honest apprehension of a design on the part of the person killed to commit a felony, or to do him some great bodily injury. In such a case the crime might be only manslaughter, and that too of the lowest degree. But to justify the act of killing in such a case, would be to establish a rule for the security of human life, resting upon the uncertain apprehension of men who may act upon unreasonable and improbable grounds." Wharton on Crim. Law, p. 1027.

You are to be satisfied from the evidence in this cause as to existence of the facts necessary to amount to a reasonable apprehension of danger sufficient to justify an interference, as well as the adaptedness of the force used to a lawful purpose; and whether it was confined within reasonable and proper limits. The means of exercising your judgment on these subjects are to be obtained from the evidence in this case. These are questions which may safely be left in the hands of an intelligent, impartial jury.

I need scarcely remind you of the importance of this cause. The charge against the accused is that of having caused the death of a fellow being. The act from which death resulted is admitted. The law is tender of human life, and while it mercifully graduates the degrees of criminal responsibility according to the degrees of the guilt of the accused, it never entirely absolves the party by whose hands death results, unless the act, from which such fatal consequences ensued, was a lawful act. If the accused has incurred no legal responsibility because of the lawfulness of the act which occasioned the death of another, he is entitled to your verdict. The law requires no sacrifice.

Before arriving at a conclusion either way, you should carefully scrutinize the evidence in this cause. The defendant has taken the law in his own hands. Nothing, but necessity will justify him in doing so, and you have a right to hold him to a strict accountability for the manner in which he administered it. Was the occasion so urgent, or the danger so imminent, that he was justified in immediately resorting to the force he used without first resorting to less violent means to accomplish his object? If it was not, or if he carried the force beyond what was reasonably necessary for the accomplish-

ment of a lawful purpose, he should be convicted upon this indictment.

The verdict of this jury will be a precedent of no inconsiderable magnitude in this community.

THE VERDICT AND SENTENCE.

The *Jury* retired, and after an absence of four hours, returned with the verdict—"Guilty,—but we earnestly recommend the prisoner to the mercy of the Court."

The COURT sentenced the prisoner to pay a fine of \$500, and to be confined in the State Prison at hard labor for one year.

THE TRIAL OF JAMES W. LENT FOR ASSAULT AND BATTERY, NEW YORK CITY, 1819.

THE NARRATIVE.

One day a leading criminal lawyer of New York City went to the city prison to see a client. When the jailor was told his errand, he asked the lawyer for a tip before he let him into the cell, and when he was refused, was quite angry. He took his revenge by not coming to open the door when the lawyer was through, and so he had to remain there until he was able to make himself heard by persons outside, who came to his rescue and told the jailor to open the door. The jailor was indicted for assault and battery, convicted and fined, his plea that he had forgotten being held by the Court to be no excuse.

THE TRIAL.¹

In the Court of General Sessions, New York City, April, 1819.

HON. CADWALLADER D. COLDEN,² *Mayor*.

April 5.

At the last November term the Grand Jury had returned an indictment against James W. Lent for an assault and battery upon John A. Graham,³ one of the counselors of this court. A jury having been impanelled, the trial came on today.

P. C. Van Wyck,⁴ for the People.

Hugh Maxwell,⁵ for the Prisoner.

¹ *Bibliography.* *New York City Hall Recorder. See 1 Am. St. Tr. 60.

² See 1 Am. St. Tr. 4.

³ See 2 Am. St. Tr. 515, *post*, p. 854.

⁴ See *post*, p. 547.

⁵ See 1 Am. St. Tr. 62.

THE EVIDENCE

The *Witnesses* for the People testified that the prisoner was one of the turnkeys of Bridewell; that about half past 4 in the afternoon of October 8th last, having occasion to see and consult with one Jordan, a prisoner confined in Bridewell, Dr. Graham went there, and found Lent apparently dozing; who, on being informed by him that he wanted to see that prisoner, took the key and accompanied Dr. Graham to the front door, leading to the prisoner's room, and there halted, and without opening the door demanded of him \$5. The doctor inquired of Lent his meaning, and demanded entrance, which was then granted, but with reluctance. He hesitated in opening the door to the prisoner's room; and when this was done, Dr. Graham told him that he should be detained with the prisoner not to exceed six minutes. He finished his business, and Lent not appearing to unlock the door, in about fifteen minutes from the time Dr. Graham first entered, he began to make a noise with a chain, and call aloud to those he saw passing by, and beg their assistance, but no one came to his relief. At length he saw a person passing the prison, called aloud to him and requested him

to go to the keeper and give information. Dr. Graham having been detained about half an hour, Lent came and opened the door, when the former told him that he had treated him like a scoundrel, and threatened to complain to the grand jury. Whereupon Lent shook his fist in the face of Dr. Graham, abused him with very insulting language, and pursued him over to his office, with threats and curses. Afterwards Lent made another assault on Dr. Graham in the street. In the course of his testimony Dr. Graham further testified that he verily believed that the conduct of Lent towards him originated from his refusing to give him \$5. It had been customary for counsel, who frequently went into Bridewell, to see prisoners, to give the turnkeys, from time to time, presents for their trouble; and the doctor had but a short time before this given Lent a small sum.

For the *Prisoner* it was attempted to prove that the detention of Dr. Graham resulted from forgetfulness and was not premeditated. *Rev. John Stanford* testified that he was once detained in the Bridewell by mistake while visiting a prisoner there.

The *Counsel* made short speeches to the *Jury*.

CADWALLADER, Mayor, charged the jury, that, as respected the public administration of justice, this case was important. Formerly a prisoner was not allowed the benefit of counsel; but now, according to the principles of our constitution, a different rule prevailed. The party accused is entitled to the

assistance of counsel, who, in case of inability of the party, shall be assigned by the Court. But this privilege would be nugatory—it would be a mere mockery, if counsel should be denied access, when employed by the prisoner or assigned by the Court.

In this case, Dr. Graham had a right to visit this prison; and the turnkey, in obstructing his entrance, and detaining him, in the manner stated in his testimony, committed an outrage upon public justice. The demand also of the \$5, if made, was scandalous in the extreme, and is not extenuated by any usage or custom whatsoever; and if the refusal of Dr. Graham to pay that sum to the defendant, influenced his subsequent conduct, his offense is greatly aggravated.

It had been contended, that the detention of Dr. Graham was not intentional, but arose from the forgetfulness of Lent. Admitting this to be the case, it does not excuse, much less justify, the defendant. He was informed by Dr. Graham of the length of time he should be detained in the prison; and it was therefore the duty of Lent to have attended at or near the time, and to have unlocked the door. This was a part of his duty; and if the excuse which has been urged in his favor, is to prevail, he may, through forgetfulness, imprison a citizen a whole night.

The *Jury* returned a verdict of *Guilty* and the prisoner was sentenced to a fine of \$25 and costs.⁶

⁶ VAN WYCK, PIERRE CORTLAND. Graduated Columbia, 1795. Recorder New York City, 1806, 1808-9, 1811-12. District Attorney New York City, 1818-1829. City Alderman. Died April 5, 1827, aged 48.

THE ACTION OF JOHN TREVETT AGAINST JOHN WHEEDEN FOR REFUSING PAPER MONEY, RHODE ISLAND, 1786.

THE NARRATIVE.

The period immediately succeeding the American revolution was the most gloomy in our history. The country was exhausted by a protracted contest of seven years, and, on the restoration of peace, there were found to be causes of discontent in many of the states, which threatened to embroil the citizens in sanguinary domestic dissensions. The army, unpaid and discontented, had returned to their homes, amongst a population as impoverished as themselves, and the whole people were subjected to burdensome taxes to meet a mass of debt, which had been accumulated in the course of the war.¹ Money became very scarce and in Rhode Island a political party arose which obtained a large majority in the State Assembly whose idea was that paper money might be forced, by legislative authority, to take the place of gold, and laws were passed to carry out this policy to the utmost extent by the strong arm of the law. A bank was established to issue 100,000 pounds of paper money, to be loaned to the farmers on their land at four per cent, and to be a lawful tender for all debts. But when the money was issued the merchants would not take it for the goods they sold or the debts due them: whereupon the Assembly passed an act which provided that any person who refused to take the money at par should be fined 100 pounds and be forever incapable of holding a public office. This did not do any good: people still continued to refuse the paper, and so another law was passed that all offenders against the bank act should be tried within three

¹ 2 Chand. Crim. Tr. 269.

days after the complaint was made; no jury was to be allowed and no appeal from the decision of the trial court and the offender to be forthwith sent to jail.

A Newport butcher named John Wheeden had among his customers a strong paper money man named John Trevett. The latter, who was a cabinetmaker, presented himself at the market one day and purchased a few pounds of beef and tendered in payment some of the new money. Wheeden refused to take the paper at its par value and Trevett, in a rage, lodged a complaint against him. The hearing began almost immediately and, as it was a test case, the excitement in the community was immense.

“And as the judges were removable at the will of the Assembly, there seemed much reason to believe that the law would be vigorously executed. When the day of trial came, the benches in the court-room were packed, every inch of standing room was taken, while a great crowd unable to get in stood under the windows, or jostled each other about the doors. Each side was represented by able counsel, for the contest was in truth not between Trevett and Wheeden, but between the farmers and the merchants, between those who, having mortgaged their lands for the paper issue, now struggled hard to keep it at par, and those who, recalling the disastrous times of 1779, struggled hard to prevent a shilling of the paper from ever getting out of the hands of its holders. The first day was taken up in listening to counsel on each side. The excitement of the audience was intense. The debate was warm and conducted with great animosity. On the second day, the Court rendered its decision. Judge Howell was appointed to deliver it. When he began to speak, a death-like stillness was in the room, but when he was done the shout of exultation that went up from the benches announced to the crowd without that Wheeden had won, and that the odious act had been pronounced unconstitutional by the Court.”²

THE TRIAL.³

In the Superior Court of Judicature, Newport, September, 1786.

HON. PAUL MUMFORD,⁴ *Chief Justice.*

HON. JOSEPH HAZARD,⁵

HON. THOMAS TILLINGHAST,⁶

HON. DAVID HOWELL,⁷

} *Associate Justices.*

September 16.

The plaintiff, *John Trevett*, having complained that he had purchased from *John Wheeden* some meat in the public market and that the latter had refused to take in payment of the meat paper money of the state tendered him, the defendant

³ *Bibliography.* *"The Case of Trevett against Wheeden, on information and complaint, for refusing paper bills in payment for butcher's meat, in market, at par with specie. Tried before the honorable superior court, in the county of Newport, September term, 1786. Also, the case of the judges of said court, before the honorable general assembly, at Providence, October session, 1786, on citation, for dismissing said complaint. Wherein the rights of the people to trial by jury, etc., are stated and maintained, and the legislative, judiciary and executive powers of government examined and defined. By James M. Varnum, Esq., major general of the state of Rhode Island, etc., counsellor at law, and member of congress for said state. Providence: Printed by John Carter, 1786." See also *"*Memoirs of the Rhode Island Bar*," by Wilkins Updike. *"*Chandler Am. Cr. Tr.* 1 Am. St. Tr. 116.

⁴ See *post*, p. 599.

⁵ See *post*, p. 599.

⁶ TILLINGHAST, THOMAS. (1742-1821.) Born East Greenwich, L. I. State Representative, 1772-73, 1778-80. Soldier in the Revolution. Judge Common Pleas, 1779. Judge Supreme Court Rhode Island, 1780-1797. Member Congress, 1797-99, 1801-03.

⁷ HOWELL, DAVID. (1747-1824.) Born New Jersey. Graduated College of New Jersey. Professor of Mathematics and Natural Philosophy Brown University, 1769. Professor of Law thirty-four years; a member of the Board of Fellows of the Corporation for fifty-two years, and for many years Secretary of the Corporation. Practiced law in Rhode Island. Member of Congress under the Confederation from Rhode Island. Appointed U. S. Judge District of Rhode Island, 1812.

not denying the facts, pleaded "that it appears by the act of the General Assembly, wherein said information was founded, that the act had expired, and hath no force. Also, for that by said act the matters of complaint are made triable before special courts, uncontrollable by the Supreme Judiciary Court of the state. Also, for that the said court is not, by said act, authorized and empowered to impanel a jury, to try the facts charged in the information and so the same is unconstitutional and void." The complaint was filed before the CHIEF JUSTICE, at his chambers, who referred it to the full court, which assembled today.

*James M. Varnum*⁶ and *Henry Marchant*,⁷ for the Defendant.

THE EVIDENCE

John Trevett swore to the facts as stated in his complaint. The following are the statutes of Rhode Island on which the complaint is founded: 1. The statute establishing the Bank and providing that its bills were to be issued in a convenient form, not more than three pounds in value nor less than six pence; that the money was to be a lawful tender for all debts and in case any person refused to receive it as

such his debt was to be forever barred. 2. The statute which provided that any person who should refuse to take these bills of credit in exchange for any articles which he might have for sale, according to the amount expressed on the face of such bills, or make any difference in the prices between silver and paper money in any sale or exchange, or direct the same to be done; or in any manner what-

⁶ VARNUM, JAMES MITCHELL. (1749-1789.) Born Dracont, Mass. Graduated Rhode Island College, now Brown University, 1769. Studied law with Oliver Arnold, of Providence, and admitted to bar, 1771, and settled in East Greenwich. Entered the army at twenty-seven. Elected to Rhode Island Assembly. Brigadier General, 1777. Major General State Militia, 1779. Elected to Congress, 1780. Resumed practice of law after the war. Member of Congress, 1786. In 1787 was appointed judge of the superior court of the Northwestern Territory, and died at Marietta, Ohio.

⁷ MARCHANT, HENRY. (1741-1796.) Born Martha's Vineyard, Mass., and studied law with Judge Trowbridge, in Cambridge, and established himself in Newport, Rhode Island. Attorney General of the colony, 1770. Was a delegate to the Continental Congress three years, when he declined serving longer. On the organization of the government under the constitution, was appointed by Washington judge of the district court for Rhode Island.

ever tend or attempt to depreciate or discourage the passing of such bills, of the price of the face thereof, or do any act to invalidate or weaken the act emitting such bills for the first offense should forfeit and pay the sum of one hundred pounds, and be rendered incapable of being elected to any office of honor, trust, or profit within the state. 3. The statute which enacted that if any person refused to receive such bills as coin, according to previous laws, the complainant should apply to either of the judges of the superior court of judicature or inferior court of common pleas,

and citation should be issued to the refusing party, to appear before a special court within three days, and there stand his trial, without a jury, according to the laws of the land, before such court. And the judgment of the court, upon the conviction of the accused, was to be forthwith executed, and the offender immediately to pay the penalty, or stand committed to jail until sentence should be performed; which judgment was to be final and conclusive, and without appeal. No delay, protection, privilege or injunction should, in any case, be prayed for, allowed or granted.

MR. VARNUM'S SPEECH FOR THE DEFENSE.

Mr. Varnum. May it please the Honorable Court, I do not appear upon the present occasion, so much in the line of my profession, as in the character of a citizen deeply interested in the constitutional laws of a free, sovereign, independent state. And indeed whenever the rights of all the citizens appear to be essentially connected with a controverted question, conscious of the rights of man we exercise our legal talents only as means, conducive to the great end of political society, general happiness. In this arduous though pleasing pursuit, should my efforts appear too feeble to support the attempt, I shall derive a consolation in reflecting, that the learned and honorable gentleman at my right is with me in the defense.

Well may a profound silence mark the attention of this numerous and respectable assembly! Well may anxiety be displayed in every countenance! Well may the dignity of the bench condescend to our solicitude for a most candid and serious attention, seeing that, from the first settlement of this country until the present moment, a question of such magnitude as that upon which the judgment of the Court is now prayed, has not been judicially agitated.

Happy am I, may it please Your Honors, in making my warmest acknowledgments to the Court, for permitting the information and plea to be considered by them, in their supreme judiciary capacity. By this indulgent concession, we feel ourselves at liberty to animadvert freely upon the illegality of the new-fangled jurisdictions, erected by the General Assembly, in the act more immediately in contemplation. The embarrassments naturally accompanying a plea to the jurisdiction, by removing the cause from the special court into this court, are totally removed; and, with them, the painful necessity of considering Your Honors as individually composing so dangerous a tribunal. The idea of that necessity is truly alarming and we cannot do justice to our feelings without expressing a fervent wish that it may hereafter be ever banished from the human breast.

In discussing the several points stated in the plea we must necessarily call in question the validity of the legislative act upon which the information is grounded. We shall attempt most clearly to evince, that it is contrary to the fundamental laws of the state, and, therefore, as the civilians express it, a mere nullity, and void, *ab initio*. We shall treat, with decent firmness, upon the nature, limits and extent, of the legislative powers; and deduce, from a variety of observations and authorities, that the Legislature may err, do err; and that this act, if we confine ourselves to the subject matter of it, can only be considered as an act of usurpation; but having been enacted by legislators, of whose integrity and virtue we have the clearest conviction, and of whose good intentions we have not a doubt, it will be viewed as an hasty resolution, inconsiderately adopted, and subject to legal reprehension.

The parties named in the process are of no further consequence, than as the one represents the almost forlorn hopes of a hitherto disappointed circle; the other as a victim; the first destined to the fury of their intemperate zeal and political frenzy. Why should the abettors of this salutary act, as many are pleased to call it, retire behind the curtain in the day of trial, unless something within them de-

clares that all is not right? Or, dare they not appear in the character of informers? Why should their artillery be levelled against an unfortunate man, who, not three weeks since, was an object of charity in the streets of Newport; and now, "poor pensioner upon the bounties of an hour," is called upon to answer, criminally, for refusing beef at fourpence the pound, when it cost him sixpence upon the hoof, although purchased of some of the most influential promoters of the present measures? Were they dubious of the event, or did they feel a reluctance in attacking gentlemen of business, character and fortune, who daily and openly trample upon this favorite idol? Were they not acquainted with a Gibbs, and are they not intimately connected with a Cooke?

Incomparable was the sentiment of a fine writer, "that in a democratical government, the customs and manners control the laws." And whenever an attempt is made to force upon the people a system repugnant to their principles, and at which every sentiment of integrity must reluct, the authors themselves, however sanguine in their hopes, will ever betray an instability in the execution, that generally forebodes disappointment and chagrin. To your Honors, however, it is submitted to determine how far the observation will apply to the cause on trial. The peace, the honor, the safety of the state, depend upon, and the fate of unborn millions may be affected by it.

The first point to which we solicit the attention of the honorable Court is, that the act of the Legislature, upon which the information is founded, hath expired. In the preamble to this act it is stated, "that the usual and stated methods and times of holding courts within this state are impracticable, inexpedient, and inapplicable to the true intent and meaning of the said act (the act inflicting the hundred pounds penalty) and altogether insufficient to carry into effect the good purposes of this Legislature, touching the same." Then follows: "Be it enacted, that the mode of procedure, and the method of law process, against any person or persons who shall be guilty of a breach of the aforesaid act, etc., shall be as fol-

loweth." Hence, it is evident, that the principal aim in this act is so to modify and vary the process, as to enforce the sanctions of the former; lessening, however, the fine, to render prosecutions more familiar and practicable. Examine the act with the most critical exactness; there is not a clause in it which creates a crime, or defines or qualifies an action, so as to infer the idea of criminality. Observe therefore a subsequent clause, which enacts, "that the legal mode of carrying the afore-recited act into execution shall be in force fully and completely, for every purpose therein mentioned and contained, until all offenses, which have been committed and complained of, and which may be committed and complained of, until the expiration of ten days after the rising of this assembly, may be fully heard, tried and determined; anything in this act to the contrary in any wise notwithstanding." What then hath become of the legal mode, pointed out in the act, since the expiration of the ten days therein mentioned? What other legal mode than that in question is taken notice of? That is the only antecedent to the limiting clause; at least, it is the last antecedent; and so grammatically, as well as legally, is intended to continue in force the said space of ten days. "The legal mode" "shall be in force" "until the expiration of ten days"; consequently, at the expiration of ten days there was an end of it.

For penal statutes are to be construed strictly; not only with regard to the crime and the penalty, but also with respect to the process; more especially, when the manner of trial is repugnant to the common law. I am sensible that statutes, made *pro publico bono* (not *malo*, as in the present instance), claim a liberal construction. Of that kind may be deemed, in legal contemplation, the emitting act, whereby it may be supposed that the means of commerce and other business are enlarged; but this act and the former penal act becoming one, are altogether penal. They are not directed to the public good, nor are they so formed as to be entitled to liberal construction.

Should it be objected, that this construction would mani-

festly oppose and frustrate the general intent of the Legislature; I answer the courts of law will endeavor to establish the actual meaning of the Legislature, if not opposed by a plain, legal construction; but as they are sworn to judge according to law, they cannot depart from this rule of decision.

But, may it please your Honors, we do not place our principal reliance upon this objection, although in legal propriety we might safely meet the consequences. The whole frame of the act is so replete with blunders, contradictions and absurdities, that not a trace of law-learning can be discovered in it. And to the honor of those of the professional gentlemen, who prefer the good of their country to the paltry gains of business, they had not anything to do with it; nor any one else who understood, or, if he understood, duly considered what he was about.

We now proceed to the second point stated in the plea, "that by the act of the Legislature, special trials are instituted, uncontrollable by the Supreme Judiciary Court of the state." There are, in all free governments, three distinct sources of power, the legislative, the judiciary and executive. The judiciary power is more or less perfect, as the formation of the courts of law tends to produce certainty and uniformity in legal determinations. And, indeed, without certainty and uniformity in the judicial tribunals, the best possible system of laws will prove entirely inadequate to the security of the people. For law itself is but a rule of action; and consequently its very existence is destroyed, when contradictory decisions are admitted upon the same point. From hence may clearly be inferred the necessity of a supreme judiciary court, to whose judgments, as the only conclusive evidence in law questions, all subordinate jurisdictions must conform. Such is the court before which I now have the honor of appearing. Into the nature and extent of whose jurisdiction, permit me, with humble deference, to inquire.

In the charter granted by King Charles the Second, it is granted, to the Governor and company, when convened, in their legislative capacity, "to appoint, order and

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direct, erect and settle, such places and courts of jurisdiction, for the hearing and determining of all actions, matters and things, within the said colony and plantation, and which shall be in dispute, and depending there, as they shall think fit; and also to distinguish and set forth the several names and titles, duties, powers and limits, of each court, clerk and officer, superior and inferior." In consequence whereof, the general assembly, in the year 1729, established this court in its present form, "a superior court of judicature, court of assize, and general gaol-delivery, over the whole colony for the regular hearing and trying all pleas, real, personal and mixed, and all pleas of the crown." That they shall have "the same power and authority, in all matters and things in this colony, as the Court of Common Pleas, King's Bench, or Exchequer, have, or ought to have, in that part of Great Britain heretofore called England, and be empowered to give judgment in all matters and things before them cognizable, and to award execution thereon."

This establishment has never been varied, nor the jurisdiction of the court diminished. The powers annexed to it were derived from the charter, from our original constitution; and, by an uninterrupted exercise, have become matters of common right. In point of antiquity, we find them existing, in full vigor, in the earliest periods of which we have any regular traces of the English constitution. It is unnecessary, however, to look any further back than to the Norman reigns, when justice was exercised in one court called the "*Aula Regis*"; "out of this court the courts of common pleas and exchequer seem to have been derived, some time before the making of the statute of Magna Charta; the former of which courts properly determines pleas merely civil, and the latter those relating to the revenue of the crown. And after the erection of these courts, the supreme court seems, by degrees, to have obtained the name of the Court of King's Bench, and hath always retained a supreme jurisdiction in all criminal matters."

The extent of these powers is well defined by the author

last referred to, as well as by most of the writers upon the subject. "There is no doubt but that this court, being the highest court of common law, hath not only power to reverse erroneous judgments, given by inferior courts, but also to punish all inferior magistrates, and all officers of justice, for all wilful and corrupt abuses of their authority."

It commands, prohibits and restrains, all inferior jurisdictions, whenever they attempt to exceed their authority, or refuse to exercise it for the public good, or upon the application of individuals. There are many instances, I must confess, in which no appeal is allowed from other courts to this court; and in such cases it will not interpose its supreme control, unless the other courts exceed their authority, or otherwise, as before mentioned.

Let us illustrate the subject by reflecting, for a moment, upon the establishment of our Courts of General Sessions of the Peace. They are five in number, corresponding to the five counties of the state. They have cognizance of all crimes not capital, arising within their respective districts, and their jurisdictions are perfectly equal. Suppose them exercising their legal judgments upon the same law; and that this law is of a complicated nature, admitting of different constructions, both in the definition of the crime, and the mode of punishment: May we not, must we not, conclude, that the same law would have different operations in the different counties? Hence arises the necessity of a supreme control, of a common standard, to which the opinions of these five judicatories shall be conformable. The citizens are entitled not only to liberty, arising from the security which the laws afford, but they are equally entitled, and entitled to equal liberty. They must, therefore, they will apply to one tribunal, as to a focal point, where the knowledge of the law is concentrated, and from whence its voice will be heard with irresistible conviction, confirming the principles of universal equality.

Had the cognizance of informations been confined to the Courts of Sessions only, the evil might have been remedied, without appeal, by writs of *certiorari*, prohibition, man-

damus and *procedendo*; but by an unheardof arrangement in the special jurisdictions, the judges of this court are precisely upon a level with those of the Sessions. Their jurisdiction is concurrent, cumulative and equal. Consequently there would not be a propriety in applying to this Court, in their supreme judicial capacity, to correct the errors and restrain the excesses that might arise from oppressive determinations. For in the second, they might counteract their first deliberations, or refuse to grant redress: but by their first decisions, as a special court, a legal prejudice would naturally be formed in the minds of the judges individually, which might totally obstruct the avenues to justice. The pride of opinion is more or less prevalent in all men, however exalted their stations; and however conformably the intention may be to the principles of rectitude, the judgment will be biased by pre-existing opinions.

Making every possible concession for the sake of the argument, the Supreme Judiciary Court could only correct the errors of its own judges, determining in the special court; and therefore the extravagances that might accompany the proceedings of the other five courts, could not, in any possible case, be represented.

May it please Your Honors, as all the glory of the solar system is reflected from yonder refulgent luminary, so the irradiations of the inferior jurisdictions are derived from the resplendent control of this *primum mobile* in the civil administration. Under its genial influence, therefore, we beg liberty to consider the last point submitted to the judgment of the Court, "that by the act of the Legislature the Court is not authorized or empowered to empanel a jury for trying the facts complained of in the information."

The proposition cannot be controverted: The expressions in the act, "that the majority of the judges present shall proceed to hear, etc., without any jury," do not require a comment. Should it be objected that this clause of the act only empowers the judges to try the fact, when the parties will agree to waive the trial by jury, it will be sufficient to answer,

that the General Assembly intended directly the contrary. It is well known by all present, that on one day this clause was rejected, but on the day following (in consequence of a nocturnal *imperium in imperio*, or convention of part of the members) a motion was made for receding, and they did recede accordingly. The general tenor of the act was so repugnant to the honest feelings of the people, when excited by sober reflection, that the junto out of doors, and possibly some leading men within, were apprehensive that convictions would not take place in the usual mode of trial. They aimed therefore at a summary process, flattering themselves that the judges, being elected by the legislators, would blindly submit to their sovereign will and pleasure. But, happy for the state, our courts in general are not intimidated by the dread, nor influenced by the debauch of power!

This part of the subject, and which is by far the most important, will require a more ample discussion than the preceding. I must, therefore, beg the attention of the honorable Court to the following considerations; that the trial by jury is a fundamental right, a part of our legal constitution; that the Legislature cannot deprive the citizens of this right; and that your Honors can, and we trust will, so determine.

By the Great Charter of Liberties, which was obtained sword in hand from King John; and afterwards, with some alterations, confirmed in Parliament by King Henry the Third, his son, which charter contained very few new grants; but, as Sir Edward Coke observes, was for the most part declaratory of the principal grounds of the fundamental laws of England. Afterwards, by the statute called *Confirmatio Cartarum*, whereby the Great Charter is directed to be allowed as the common law, all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches, and read twice a year to the people; and sentence of excommunication is directed to be constantly denounced against all those that by word, deed or counsel, act contrary thereto, or in any degree infringe it. Next by a multitude of subsequent corroborating statutes (Sir Edward Coke, I think,

reckons thirty-two) from the First Edward to Henry the Fourth. Then, after a long interval, by the petition of right; which was a parliamentary declaration of the liberties of the people, assented to by King Charles the First in the beginning of his reign. Which was closely followed by the still more ample concessions made by that unhappy prince to his Parliament, before the fatal rupture between them; and by the many salutary laws, particularly the *habeas corpus* act, passed under Charles the Second. To these succeeded the bill of rights, or declaration delivered by the lords and commons to the Prince and Princess of Orange, February 13, 1688; and afterwards enacted in Parliament, when they became king and queen; which declaration concludes in these remarkable words: "And they do claim, demand, and insist, upon all and singular the premises, as their undoubted rights and liberties." And the act of Parliament itself recognizes "all and singular the rights and liberties, asserted and claimed in the said declaration to be the true, ancient and indubitable rights of the people of this kingdom." Lastly, these liberties were again asserted, at the commencement of the present century, in the act of settlement, whereby the crown was limited to his present majesty's illustrious house, and some new provisions were added at the same fortunate era, for better securing our religion, laws, and liberties; which the statute declares to be "the birthright of the people of England"; according to the ancient doctrine of the common law. The same elegant writer, who appears to possess the highest degree of information in legal history, observes, when speaking of this palladium of liberty, that

"it is a trial that hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof. Some authors have endeavored to trace the original of juries up as high as the Britons themselves, the first inhabitants of our island; but certain it is, that they were in use among the earliest Saxon colonies, their institution being ascribed by Bishop Nicholson to Woden himself, their great legislator and captain. Hence it is, that we may find traces of juries in the laws of all those nations which adopted the feudal system, as in Germany, France, and Italy; who had all of them a tribunal composed of twelve good men and true, *boni hom-*

ines, usually the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals, judged each other in the lord's courts; so the king's vassals, or the lords themselves, judged each other in the king's court. In England we find actual mention of them so early as the laws of King Ethelred, and that not as a new invention. Stiernhook ascribes the invention of the jury, which in the Teutonic language is denominated *nembda*, to Regner, king of Sweden and Denmark, who was cotemporary with our King Egbert: just as we are apt to impute the invention of this, and some other pieces of juridical polity, to the superior genius of Alfred the Great; to whom, on account of his having done much, it is usual to attribute everything: and as the tradition of ancient Greece placed to the account of their one Hercules whatever achievement was performed superior to the ordinary prowess of mankind. Whereas the truth seems to be, that this tribunal was universally established among all the northern nations, and so interwoven in their very constitution that the earliest accounts of the one give us also some traces of the other. Its establishment however and use, in this island, of which date soever it be, though for a time greatly impaired and shaken by the introduction of the Norman trial by battel, was always so highly esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it. In Magna Charta it is more than once insisted on as the principal bulwark of our liberties: but especially, by cap. 29, that no freeman shall be hurt, in either his person or property, *nisi per legale iudicium parium suorum vel per legem terrae*. A privilege which is couched in almost the same words with that of the emperor Conrad, two hundred years before: *Nemo beneficium suum perdat, nisi secundum consuetudinem antecessorum nostrorum, et per iudicium parium suorum*. And it was ever esteemed, in all countries, a privilege of the highest and most beneficial nature."

From these passages in Judge Blackstone's Commentaries, from the variety of authorities to which he refers, and from many others of the greatest reputation, it most clearly appears, that the trial by jury was ever esteemed a first, a fundamental, and a most essential principle, in the English constitution. From England this sacred right was transferred to this country, and hath continued, through all the changes in our government, the firm basis of our liberty, the fairest inheritance transmitted by our ancestors.

The settlers in this country, from whom we are descended, were Englishmen: they gloried in their rights as such: but being persecuted in matters of religion, over which no earthly tribunal can have the control, they bravely determined to

quit their native soil, to bid a final adieu to the alluring charms of their situation, and commit their future existence to that Almighty Power, whose authority they dared not infringe, but in whose protection they could safely confide. They tempted the foaming billows, they braved, they conquered the boisterous Atlantic, and rested in a howling wilderness, amidst the horrid caverns of the untamed beasts, and the more dangerous haunts of savage men. They retained their virtue, their religion, and their inviolable attachment to the constitutional rights of their former country. They did not withdraw or wish to withdraw themselves from their allegiance to the crown, but emigrated under a solemn assurance of receiving protection, so far as their situation might require, and other circumstances render practicable.

The laws of the realm, being the birthright of all the subjects, followed these pious adventurers to their new habitations, where, increasing in numbers, amidst innumerable difficulties, they were formed into colonies by royal charters, in the nature of solemn compacts, confirming and enlarging their privileges.

In the charter granted to our forefathers, the following paragraph claims our particular attention :

“That all and every the subjects of us, our heirs and successors, which are already planted and settled within our said colony of Providence Plantations, which shall hereafter go to inhabit within the said colony, and all and every of their children, which have been born there, or on the sea going thither, or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects, within any of the dominions of us, our heirs or successors, to all intents, constructions and purposes whatsoever, as if they, and every of them, were born within the realm of England.”

This concession was declaratory of, and fully confirmed to the people the Magna Charta, and other fundamental laws of England. And accordingly, in the very first meeting of the General Assembly, after receiving the charter, in the year one thousand six hundred and sixty-three, they made, and passed an act, “declaring the rights and privileges of his majesty’s subjects within this colony,” whereby it is enacted, “that no freeman shall be taken or imprisoned, or be deprived

of his freehold or liberty, or free customs, or be outlawed, or exiled, or otherwise destroyed, nor shall be passed upon, judged or condemned, but by the lawful judgment of his peers, or by the laws of this colony: and that no man, of what estate or condition soever, shall be put out of his lands and tenements, nor taken, nor imprisoned, nor disinherited, nor banished, nor any ways destroyed, nor molested, without for it being brought to answer by due course of law. And that all rights and privileges, granted to this colony by his majesty's charter, be entirely kept and preserved to all his majesty's subjects, residing in or belonging to the same."

This act, may it please the honorable Court, was not creative of a new law, but declaratory of the rights of all the people, as derived through the charter from their progenitors, time out of mind. It exhibited the most valuable part of their political constitution, and formed a sacred stipulation that it should never be violated. It would be a pleasing, and perhaps a useful employment, to trace and point out the numerous instances, wherein the General Assembly have reasserted these solemn rights; but time will not admit of a minute detail. I cannot, however, be entirely silent upon this head.

At their September session, in the year one thousand seven hundred and sixty-five, the General Assembly, taking into the most serious consideration an act, passed by the British Parliament at their last session, for levying stamp duties, and other internal duties, in North America, resolved, that the first adventurers, settlers of this his majesty's colony and dominion of Rhode Island and Providence Plantations, brought with them, and transmitted to their posterity, and all other his majesty's subjects, since inhabiting in this his majesty's colony, all the privileges and immunities that have at any time been held, enjoyed and possessed, by the people of Great Britain.

Afterwards, at the October session, in the year one thousand seven hundred and sixty-nine, they unanimously passed the following resolution:

"That all trials for treason, misprison of treason, or for any felony

or crime whatsoever, committed and done in his majesty's said colony and dominion, by any person or persons residing therein, ought of right to be had and conducted in and before his majesty's courts held within the said colony, according to the fixed and known course of proceeding; and that the seizing of any person or persons, residing in this colony, suspected of any crime whatsoever, committed therein, and sending such person or persons to places beyond the sea to be tried, is highly derogatory to the rights of British subjects; as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused."

The attempts of the British Parliament to deprive us of this mode of trial, were among the principal causes that united the colonies in a defensive war, and finally effected the glorious revolution. This is evident from the declaration of rights made by the first Congress, in October, in the year one thousand seven hundred and seventy-four; the preamble states, "that the inhabitants of the English colonies, in North America, by the immutable laws of nature, the principles of the English constitution, and the several charters and compacts, have the following rights," the fifth of which is, "that the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law."

At the same time they enumerated the several acts of the British Parliament to which they declared they could not submit, particularly "12 Geo. III. Chap. 24, intituled, 'an act for the better securing his majesty's dock-yards, magazines, ships, ammunition and stores,' which declares a new offense in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person, charged with the committing of any offense described in the act, out of the realm, to be indicted and tried for the same in any shire or county within the realm."

In pursuance of the same principle, upon the ever memorable fourth of July, in the year one thousand seven hundred and seventy-six, when the rights of the United States were exhibited in a new blaze of glory; when, to support them, the

fathers of their country, "with a firm reliance on the protection of Divine Providence, mutually pledged to each other their lives, their fortunes, and their sacred honor"; when they submitted "to a candid world" the catalogue of their complaints against the King of Great Britain, they charged him with "depriving us, in many instances, of the benefits of trial by jury."

Here let us pause. If the first act of the English Parliament now upon record, containing the great charter of the privileges of the subjects; if the exercise of those privileges for ages; if the settlement of a new world to preserve them; if the first solemn compact of the people of this state; if the sacred declarations of the Legislature at different periods, and upon the most important occasions; if the solemn appeal to heaven of the United States; in short, if the torrents of blood that have been shed in defense of our invaded rights, are proofs, then have we triumphed in the cause of humanity, then have we shown that the trial by jury is the birthright of the people.

Astonished am I, may it please the honorable Court, that a doubt should have arisen in the mind of any, respecting the the legal construction of our Magna Charta, our declaration of rights. Some of our warmest politicians, whose heads are undoubtedly wrong, and it is greatly to be feared their hearts are not right, have boldly asserted, that the clause which declares "that no freeman, etc., shall be tried, etc., but by the lawful judgment of his peers, or by the laws of the colony," etc., clearly authorizes any other mode of trial than that by jury, should the Legislature frame a law for that purpose. That their act would become the law of the land, and so the special jurisdictions are perfectly conformable to the letter and spirit of our constitution.

Is it possible that these pretenders to the knowledge of law should be serious, when they avow so dangerous an opinion? If they are, let them be informed that they contradict the wisdom and the practice of ages. That whenever a statute makes mention of "the law of the land," it refers either to a particu-

lar pre-existing law, to the system of laws in general, or to the mode of legal process.

Lord Coke, in his readings upon the statute, has fully demonstrated that the clause "or by the law of the land," regards the process only. That the particle or is to be construed conjunctively. And so the sentence will read, "by the lawful judgment of his peers, by, or according to, the law of the land," or, "and by the law of the land"; that is to say, by bill, plaint, information, or in any other legal manner.

There are many instances in the books of a similar construction. I shall produce only one, the case of Barker against Sureties.*

"On a special verdict in ejectment, the question turned upon these words in a will, viz.: I give the said premises to my grandson, his heirs and assigns; but in case he dies before he attains the age of twenty-one years, *or* marriage, *and* without issue, then, and in such case, he devised the same to the defendant. The fact was, the grandson attained twenty-one, and died, having never been married. And it was insisted, that the attaining twenty-one was a performance of the condition, and vested the estate absolutely in the grandson, under whom the lessor of the plaintiff claimed. And judgment was accordingly given in the county Palatine of Durham, whereof error was brought in *banco regis*. And, after several arguments, the court affirmed the judgment, upon the authority of Price against Hunt in Pollexf. 645, where the word *or* was construed conjunctively. And they said they would read this without the word *or*, as if it ran, 'and if he dies before twenty-one, unmarried and without issue;' which he did not do, for one of the circumstances failed. And all put together are but in the nature of one contingency; and it was considered, that this was not a condition precedent, but to destroy an estate devised by the former words in fee."

I recollect in an excellent treatise of law in general, subjoined to the memoirs of the House of Brandenburg, written by that great legislator, the illustrious Frederick, when speaking of the laws of England, he quotes the heads of Magna Charta; and when speaking of this part in particular, his words are, "that nobody shall be imprisoned, or deprived either of life or estate, without being judged by his peers, and according to the laws of the kingdom."

* 2 Strange 1175.

The framers of this act, however, and the supporters of the present measure, are not without a precedent; and so can not engross all the honor to themselves. And lest they should endeavor to palm themselves upon the deluded as originals, we will produce them an instance from the reign of Henry VII. as similar to the present, as the image in the mirror is to the substance.

That great oracle of the law, Lord Coke, records it in the following manner:

“Against this ancient and fundamental law (trial by jury), and in the face thereof, I find an act of parliament made, that as well justices of assize, as justices of peace (without any finding or presentment of twelve men) upon a bare information for the king before them made, should have full power and authority, by their discretion, to hear and determine all offenses and contempts, committed or done by any person or persons, against the form, ordinance and effect, of any statute made and not repealed, etc. By color of which act, shaking this fundamental law, it is not credible what horrid oppression and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson and Edmund Dudley, being justices of peace through England. And upon this unjust and injurious act (as commonly in like cases it falleth out) a new office was erected, and they made masters of the king’s forfeitures. But at the parliament holden in the first year of Henry VIII. this act of the eleventh of Henry VII. is recited and made void; for that by force of said act it was manifestly known, that many sinister and crafty, feigned and forged informations had been pursued against divers of the king’s subjects, to their great damage and wrongful vexation. And the ill success hereof, and the fearful end of those two oppressors, should deter others from doing the like, and should admonish parliaments, that instead of this precious trial by jury, they bring not in absolute and partial trials by discretion.”

Well may the countenances of certain gentlemen be changed. Well may their trembling limbs denote the perturbation of their minds. Well may “their hearts quake within them.” For all others, who, like Empson and Dudley, violate the constitutional laws of their country, deserve, and, if they persist in their career, will probably meet their fate.

But we shall proceed, with the permission of your Honors, to inquire, whether the legislature can deprive the citizens of their constitutional right, the trial by jury.

When mankind entered into a state of civil society, they sur-

rendered a part of their natural rights into the hands of the community, that they might enjoy the remainder with greater security. The aggregate of this surrender forms the power of government; the first and greatest exercise of which constitutes legislation, or the power of making laws. Consequently the Legislature cannot intermeddle with the retained rights of the people.

In the infant state of society, when the community consisted of but few members, when their wants and desires were circumscribed within narrow bounds, the power of making laws was exercised by all the people assembled for that purpose, or at least by the heads of families, who derived from nature a temporary authority over their offspring. Whatever was necessary for the good or safety of the whole was agreed to, and each individual engaged to abide by the opinion of the majority. Such was the situation of our ancestors, when they first settled in this country.

As society increased in numbers and wealth, as their settlements were extended, and their views enlarged, it became necessary to delegate the powers of legislation, and vest them in one person, in a few, or in many, as the community deemed most conducive to their common advantage. Such was the situation of our ancestors, when they petitioned to King Charles II. to be incorporated into a company, with the power of governing themselves. First, by the making of laws in a General Assembly, to be convened twice in each year, composed of magistrates elected annually by the freemen at large, and of deputies chosen semi-annually from the respective towns as their representatives. And secondly, by carrying those laws into execution, by judiciary establishments.

The power of legislation, in every possible instance, are derived from the people at large, are altogether fiduciary, and subordinate to the association by which they are formed. Were there no bounds to limit and circumscribe the Legislature; were they to be actuated by their own will, independent of the fundamental rules of the community, the government would be a government of men, and not of laws. And when-

ever the legislators depart from their original engagements and attempt to make laws derogatory to the general principles they were bound to support, they become tyrants. "For since it can never be supposed," as Mr. Locke well observes, "to be the will of the society, that the legislative should have a power to destroy that which every one designs to secure, by entering into society, and for which the people submitted themselves to legislators of their own making, whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people." And again, "when the legislators act contrary to the end for which they were constituted, those who are guilty, are guilty of rebellion."

The powers of our legislature are so clearly defined in the charter, which is conclusive evidence of the compact of the people, as well as of the royal intention, that a recurrence to them will greatly assist us in the present question. Let us attend, therefore, to the following passage :

"And that they (the general assembly) or the greatest part of them then present, whereof the governor or deputy governor, and six of the assistants, at least to be seven, shall have, and have hereby, given and granted unto them, full power and authority, from time to time, and at all times hereafter, to make, ordain, constitute, or repeal such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet, for the good and welfare of the said company, and for the government and ordering the lands and hereditaments hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall, inhabit or be within the same; so as such laws, ordinances and constitutions, so made, be not contrary and repugnant unto, but, as near as may be, agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there."

This grant, which was obtained in consequence of an association of all the people for that purpose, expressly limits the legislative powers; and by invariable custom and usage they are still so confined, that they cannot make any laws repugnant to the general system of laws which governed the realm of England at the time of the grant. The revolution has made

no change in this respect, so as to abridge the people of the means of securing their lives, liberty and property; to preserve which they have ever considered the trial by jury the most effectual.

There are certain general principles that are equally binding in all governments, more especially those which define the nature and extent of legislation. I do not recollect of having ever observed them so clearly and elegantly described, as in a treatise written by M. de Vattel, upon the laws of nations and of nature. I shall introduce him, therefore, as he is translated, in his own words:

"In the act of association, in virtue of which a multitude of men form together a state or nation, each individual has entered into engagements with all, to procure the common welfare; and all have entered into engagements with each individual to facilitate for him the means of supplying his necessities, and to protect and defend him. It is manifest that these reciprocal engagements can no otherwise be fulfilled, than by maintaining the political association. The entire nation is then obliged to maintain that association; and as in its duration the preservation of the nation consists, it follows from thence that every nation is obliged to perform the duty of self-preservation.

The constitution and its laws are the basis of the public tranquility, the firmest support of the public authority, and pledge of the liberty of the citizens. But this constitution is a vain phantom, and the best laws are useless, if they are not religiously observed. The nation ought then to watch very attentively, in order to render them equally respected by those who govern, and by the people destined to obey. To attack the constitution of the state, and to violate its laws is a capital crime against society; and if those guilty of it are invested with authority, they add to this crime a perfidious abuse of the power with which they are intrusted. The nation ought constantly to suppress these abuses with its utmost vigor and vigilance, as the importance of the case requires. It is very uncommon to see the laws and constitution of a state openly and boldly opposed; it is against silent and slow attacks that a nation ought to be particularly on its guard."

But here, the attack is open and bold; it comes with violence; it moves with huge, gigantic strides and threatens slavery or death.

"A very important question here presents itself. It essentially belongs to the society to make laws, both in relation to the manner in which it desires to be governed, and to the conduct of the citizens. This is called the legislative power. The nation may entrust

the exercise of it to the prince, or to an assembly; or to that assembly and the prince jointly; who have then a right of making new, and abrogating old laws. It is here demanded, whether, if their power extends so far as to the fundamental laws, they may change the constitution of the state? The principles we have laid down lead us to decide this point with certainty, that the authority of these legislators does not extend so far; and that they ought to consider the fundamental laws as sacred, if the nation has not, in very express terms, given them the power to change them. For the constitution of the state ought to be fixed; and since that was first established by the nation, which afterwards trusted certain persons with the legislative power, the fundamental laws are excepted from their commission. It appears that the society had only resolved to make provision for the state's being always furnished with laws suited to particular conjunctures; and gave the legislature, for that purpose, the power of abrogating the ancient civil and political laws that were not fundamental, and of making new ones; but nothing leads us to think, that it was willing to submit the constitution itself to their pleasure. In short, these legislators derive their power from the constitution; how then can they change it, without destroying the foundation of their authority?"

Have the citizens of this state ever entrusted their legislators with the power of altering their constitution? If they have, when and where was the solemn meeting of all the people for that purpose? By what public instrument have they declared it, or in what part of their conduct have they betrayed such extravagance and folly? For what have they contended through a long, painful and bloody war, but to secure inviolate, and transmit unsullied to posterity, the inestimable privileges they received from their forefathers? Will they suffer the glorious price of all their toils to be wrested from them and lost forever, by men of their own creating? They who have snatched their liberty from the jaws of the British lion, amidst the thunders of contending nations, will they basely surrender it to the administration of a year? As soon may the great Michael kick the beam, and Lucifer riot in the spoils of angels!

Constitution! we have none; who dares to say that? None but a British emissary, or a traitor to his country. Are there any such amongst us? The language has been heard, and God forbid that they should continue! If we have not a constitution, by what authority do our General Assembly convene to

make laws, and levy taxes? Their appointment by the free-men of the towns, excluding the idea of a pre-existing social compact, cannot separately give them power to make laws compulsory upon the other towns. They could only meet, in that case, to form a social compact between the people of the towns. But they do meet by the appointment of their respective towns at such times and places, and in such numbers, as they have been accustomed to do from the beginning. When met, they make laws and levy taxes, and their constituents obey those laws, and pay their taxes. Consequently they meet, deliberate and enact, in virtue of a constitution, which, if they attempt to destroy, or in any manner infringe, they violate the trust reposed in them, and so their acts are not to be considered as laws, or binding upon the people.

But as the legislative is the supreme power in government, who is to judge whether they have violated the constitutional rights of the people? I answer, their supremacy (consisting in the power of making laws, agreeably to their appointment) is derived from the constitution, is subordinate to it, and therefore, whenever they attempt to enslave the people, and carry their attempts into execution, the people themselves will judge, as the only resort in the last stages of oppression. But when they proceed no farther than merely to enact what they may call laws, and refer those to the judiciary courts for determination, then (in discharge of the great trust reposed in them, and to prevent the horrors of a civil war, as in the present case), the judges can, and we trust your Honors will, decide upon them.

In despotic countries, where the sovereign mandate issues from the throne, surrounded by servile flatterers, sycophants and knaves, the judge has nothing more to do than execute. His office is altogether ministerial, being the passive tool of that lawless domination by which he was appointed. Properly speaking, the judiciary power cannot exist where political freedom is banished from the administration. For without a system of laws, defining and protecting the rights of the people, there can be no fixed principles or rules of decision. Hence

it is, that wherever the distinct powers of government are united in one head, whether that head consists of one, or of many, the subjects groan under perpetual servitude.

I say of one or of many : for it is very immaterial by whom scourges, chains and tortures, are inflicted, provided we must submit to them. The studied and unheard-of cruelties of a Dionysius, who violated every right of humanity in his tyranny over the Syracusians during the space of thrity-eight years, were not more horrid and execrable than the united barbarities of the Council of Thirty, established at Athens, who caused more citizens to be murdered in eight months of peace, than their enemies had destroyed in a thirty years' war !

Nor am I capable of distinguishing between an established tyranny, and that government where the Legislature makes the law, and dictates to the judges their adjudication. For in that case, were they to enact tyrannical laws, they would be sure to have them executed in a tyrannical manner. The servility of the courts would render them totally subservient to the will of their masters, and the people must be enslaved, or fly to arms.

In civil as well as moral agency, there is a freedom of the will necessarily exerted in forming the judgment. Without the exercise of this, we cannot be said to determine at all, but our actions are wholly passive ; and so, in a moral sense, we could not be accountable, and in a civil point of view we should be deprived of all liberty. Every being naturally endeavors its own preservation ; and the more conformably its actions are to its nature, the nearer it approaches to perfection : but when its actions are impelled by external force, it is deprived of the means both of preservation and of perfection.

A nation may be considered as a moral being, whose health and strength consist in the due proportion, nice adjustment and equal preservation, of all its parts : and when one branch of the government steps into the place of another, and usurps its functions, the health and the strength of the nation are impaired : and should the evil be continued, so as that the one

be destroyed by the other, the nation itself would be in danger of dissolution.

Have the judges a power to repeal, to amend, to alter laws, or to make new laws? God forbid! In that case they would become legislators. Have the legislators power to direct the judges how they shall determine upon the laws already made? God forbid! In that case they would become judges. The true distinction lies in this, that the Legislature have the uncontrollable power of making laws not repugnant to the constitution: the judiciary have the sole power of judging of those laws, and are bound to execute them; but cannot admit any act of the Legislature as law, which is against the constitution.

The judges are sworn "truly and impartially to execute the laws that now are or shall hereafter be made, according to the best of their skill and understanding." They are also sworn "to bear true allegiance and fidelity to this State of Rhode Island and Providence Plantations, as a free, sovereign and independent state." But this became a state in order to support its fundamental, constitutional laws, against the encroachments of Great Britain. The trial by jury, as has been fully shown, is a fundamental, a constitutional law; and therefore is binding upon the judges by a double tie, the oath of allegiance, and the oath of office. It is a rule in ethics, "that if two duties or obligations, both of which cannot be performed, urge us at the same time, we must omit the lesser, and embrace the greater."

Let the question then fairly be stated. The General Assembly have made a law, and directed the judges to execute it by a mode of trial repugnant to the constitution. What are the judges to resolve? Did the nature of their jurisdiction admit of such a mode of trial at the times of their appointment and taking the oath of office? Surely it did not. The act of Assembly then erects a new office the exercise of which, other things equal, they may undertake, or refuse, at their own option. There is no duty, no obligation in the way. In refusing, they incur no penalty: nor can their so doing work a forfeiture of their offices as judges of the Supreme Judiciary

Court. But when it is considered that the exercise of this office would be acting contrary to their oath of allegiance, and the oath of office, they are bound to reject it, unless the General Assembly have power to absolve them from these oaths, and compel them to accept of any appointment they may be pleased to make.

I have heard some gentlemen speak of the laws of the General Assembly. I know of no such laws, distinct from the laws of the state. The idea is dangerous; it borders upon treason! " 'tis rank—it smells to heaven! "

Laws are made by the General Assembly under the powers they derive from the constitution, but when made they become the laws of the land, and as such the Court is sworn to execute them. But if the General Assembly attempt to make laws contrary hereto, the Court cannot receive them as laws; they cannot submit to them. If they should, let me speak of it with reverence, they would incur the guilt of a double perjury.

The life, liberty and property of the citizens are secured by the general law of the state. We will then suppose (as the very nature of the argument allows us to view the argument in every possible light) that the General Assembly should pass an act, directing that no citizen should leave his house, nor suffer any of his family to move out of the same, for the space of six months, upon the pain of death. This would be contrary to the laws of nature. Suppose they should enact that every parent should destroy his first born child? This would be contrary to the laws of God. But, upon the common principles, the Court would be as much bound to execute these acts as any others. For if they can determine upon any act, that it is not law, and so reject it, they must necessarily have the power of determining what acts are laws, and so on the contrary. There is no middle line. The Legislature has power to go all lengths, or not to overleap the bounds of its appointment at all. So it is with the judiciary; it must reject all acts of the Legislature that are contrary to the trust reposed in them by the people, or it must adopt all.

But the judges, and all others, are bound by the laws of nature in preference to any human laws, because they were ordained by God himself anterior to any civil or political institutions. They are bound, in like manner, by the principles of the constitution in preference to any acts of the General Assembly, because they were ordained by the people anterior to, and created the powers of, the General Assembly.

This mode of reasoning will equally apply in law as in philosophy. For wherever there is a given force applied to put a body in motion, that motion will continue until the body is opposed by an equal or greater force. And the judges being sworn to execute the fundamental laws, they must continue to execute them until they shall be controlled by laws of a superior nature. But that can never happen, until all the people assemble for the purpose of making a new constitution. And indeed I very much doubt if the citizens of any one state have power to adopt such a kind of government, as to exclude the trial by jury, consistently with the principles of the confederation.

It having been shown that this Court possesses all the powers in this state, that the Courts of King's Bench, Common Pleas, and Exchequer, possess in England, let us turn to the authorities, and observe the adjudications of those courts in similar cases. Blackstone informs us, that "acts of Parliament that are impossible to be performed; and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void." The same author having previously observed, that "the judges are the depository of the laws; the living oracles, who must decide in all cases of doubt, and who are bound by oath to decide according to the law of the land." In Bacon's Abridgment we read, "if a statute be against common right or reason, or repugnant, or impossible to be performed, the common law shall control it, and adjudge it to be void." Here permit me, may it please your Honors, to apply the authority to the act, and see how exactly it corresponds.

Is it consistent with common right or reason, that any man

shall be compelled to receive paper, when he has contracted to receive silver? That for bread he shall receive a stone, or for fish a serpent? Is it consistent with common right or reason, that he shall receive the paper, dollar for dollar with silver, when it is fully known that the discount in general is from three to four for one, among those who receive the paper at all, and that there are very many who totally refuse it? That he should be called from his business, and subjected to a fine for his refusal, when there is not a man in the state, but upon principles of justice to himself and family would have done the same? Is it right or reasonable, that for such refusal he should be called to trial in a summary manner, in three days, and that no *esso*in, protection, privilege or injunction, shall be in anywise prayed, granted or allowed? Suppose him to be confined to his bed by sickness, is he to be passed upon *ex parte*? No man is to be injured by the act of God, or by the act of the law. Suppose his witnesses are sick or absent, and cannot be procured by the time, he is not allowed even to pray for an indulgence; or if he should pray ever so fervently, he cannot be heard. Suppose him to be summoned to attend at two, or at all the counties at the same time, upon different informations, he is still to be condemned unheard. Even suppose him to stand in need of professional assistance, but that he cannot obtain at the moment, the gentlemen of the law being all necessarily attending upon a special session of the General Assembly, is he to be deprived of counsel?

“Repugnant, or impossible to be performed.” Is not the act repugnant, when it authorizes the judges to “proceed to trial without any jury, according to the laws of the land?” The laws of the land constitute the jurors the triers of facts, and the judges the triers of law only, according to the known maxim, “*ad questionem juris respondent iudices, ad questionem facti respondent juratores.*” How is it possible, then, that the judges should try, without jury,—and they are directed as well as authorized so to do,—“the said court shall proceed,”—and at the same time according to the laws of the land, when those laws direct “that no man, of what estate and

condition soever, shall be molested, without being, for it, brought to answer by due course of law, nor passed upon nor condemned, but by the lawful judgment of his peers?" Can contraries exist, and be executed at the same time? This act, therefore, is impossible to be executed.

Here is a new office indeed; and were your honors to suffer the special jurisdictions to attempt to carry the act into effect, what inconceivable mischiefs would ensue? Is there a member of the administration, or any other, that will sell his beef, his pork, his corn, or his cheese, so as to enable the retailers and hucksters to sell those articles again for paper, at the same rate they could be afforded for silver or gold? There is not. What is the consequence? Every evil-minded person in the state is invited by law to turn informer (a most despicable office) and more than five hundred prosecutions would take place in the course of a week! Horrible reflection. The idle, the profligate, the abandoned of every character, would appear in the group of prosecutors or witnesses, urged and pushed by petty conventions and designing juntos, till perjury would run down our streets like a stream, and violence like a mighty river. The judges themselves might be tempted, by the perquisites of office, to encourage informations, until every man of industry, of business and of property, must quit the state, retire from business, give up his property, or join in an opposition of force. The temptation is great, and seriously alarming. For to secure the judges individually, and their personal influence, the very emitting act directs that they shall receive all moneys tendered and refused for past contracts, and at the expiration of three months deposit them in the general treasury. What room for peculation, what inducement to corruption, what incentives to depreciate the currency!

Oh! it is an abominable act! Yet some there are, and, to our shame be it spoken, too many, who tend it, who nurse it, who hug it to their bosom as a darling child. But let me tell them it is a furious offspring, conceived by an unlawful convention, and brought forth by — at an unguarded hour.

'Tis a monster, and, as the immortal Pope expresses it upon another occasion,

It is a monster of so frightful mien,
As to be hated, needs but to be seen;
Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace!

Let us see it therefore but once! Let us consign it, O ye judges, to its fate! Death is in its constitution, and die it must!

But to return, for I must confess the digression is not particularly directed to the point more immediately in question: we again read in Bacon's Abridgment, that "the power of construing a statute is in the judges; for they have authority over all laws, more especially over statutes, to mold them according to reason and convenience to the best and truest use." Here the author refers to Hobart, Plowden, and Lord Coke, who fully justify the doctrine he advances. They are upon the table, and will be produced, if your Honors require it; but we presume it would be only trespassing upon your patience, too much exhausted already by a tedious discussion.

The satisfaction you are pleased to express upon this head, enables us to pursue the subject in another point of view. Perhaps there is not a civilized country on earth, where so small a portion of natural liberty is given into the stock of political society, as by the people of this state. There is a certain period in every year when the powers of government seem to expire; for the authority of the old officer ceases with the appointment of the new, and these cannot act until they are commissioned and sworn. The legislative of one house being composed of new members, or members newly elected twice in the year, feels and carries into effect the sentiments of the people, founded upon the extremes of liberty. The electors in the respective towns have generally some point to obtain; or, which is more unfriendly to public liberty, they are divided by parties, and so the members elected become the advocates of local, interested measures, without comparing them with the more extensive objects of the community. The

sessions seldom exceed the limits of a week: new laws are proposed, acted upon and adopted, according to the first or the preconcerted impressions of passion, without time for deliberation or reflection. The upper house, it is true, hath a negative upon the house of deputies: but they never persist in exercising it without endangering their next election. The appointment of judges, justices of the peace and other officers of government, being made by the members of both houses in a grand committee, is very often the result of political arrangements; and more attention is paid to the carrying of certain points, than to the qualification of the candidates; so that the people feel no great restraint from this quarter.

What is there then, in the nature of our government, to prevent anarchy and confusion on the one hand, or tyranny and oppression on the other? Before the revolution, the king, as supreme executive, formed the balance; but since, the executive power hath become blended with the Legislature, and we have not, like the other states in the Union, adopted any substitute for this defect.

The moment, therefore, that this Court feels itself dependent upon the Legislature, in the exercise of its judiciary powers, there will be an end of political liberty: for there is not an individual of mankind but wishes, if possible, to be exempt from the compacts that bind others. And there may be conjunctures in which the love of natural liberty will bid defiance to the restraints of law, if the Legislature are blindly guided by the general impulse. Or should these attachments be more strongly fixed to the interests of a few designing men than to the public wish, tyranny would spring out of anarchy. In either case, the interposition of the judiciary may save the constitution, at least for a time; and, by averting the immediate evil, will give scope for reflection, and so prevent a dissolution of government.

It is extremely to be regretted, that this Court is not as independent in the tenure by which the judges hold their commissions, as they are in the exercise of their judicial proceedings. The frequent changes that arise from annual appoint-

ments may have an influence upon legal decisions, and so destroy that uniformity which is essentially requisite to the security of individuals. But from these considerations we have nothing to fear upon the present occasion: for the knowledge, the integrity, the firmness of the bench, will rise superior to every obstacle; and the dignity of their determinations will display a lustre awful even to tyranny itself.

To this Honorable Court the warmest thanks of the defendant, of this assembly, of every citizen, are due, for their solicitous attention to their unalienable rights. Their expectations, their joyous hopes, await your determination; and we all pray to heaven, that before to-morrow's sun shall deck the western sky, our hopes may wanton in complete enjoyment!

Then ev'ry gen'rous breast shall glow with purest flame
Of gratitude; and fathers, anxious for the public good,
Relate the glorious deed to their attentive sons,
Who'll venerate the names of those immortal five,
Who nobly dar'd to save our dying laws!

I cannot further pursue the subject, but must come to a conclusion. We have attempted to show, that the act, upon which the information is founded, has expired: that by the act special jurisdictions are erected, incontrollable by the Supreme Judiciary Court of the state: and that, by the act, this court is not authorized or impowered to impanel a jury to try the facts connected in the information: that the trial by jury is a fundamental, a constitutional right—ever claimed as such—ever ratified as such—ever held most dear and sacred; that the Legislature derives all its authority from the constitution—has no power of making laws but in subordination to it—can not infringe or violate it; that therefore the act is unconstitutional and void; that this Court has power to judge and determine what acts of the General Assembly are agreeable to the constitution; and, on the contrary, that this Court is under the most solemn obligations to execute the laws of the land, and therefore cannot, will not, consider this act as a law of the land.

Oh! ye judges, what a godlike pleasure must you now feel

in having the power, the legal power, of stopping the torrent of lawless sway, and securing to the people their inestimable rights! Rest, ye venerable shades of our pious ancestors! our inheritance is yet secure! Be at peace, ye blessed spirits of our valiant countrymen, whose blood has just streamed at our sides, to save a sinking land!

When the tear is scarcely wiped from the virgin's eye, lamenting an affectionate father, a beloved brother, or a more tender friend; while the matron still mourns, and the widow bewails her only hope; while the fathers of their country, superior to the ills of slaughter, are completing the mighty fabric of our freedom and independence, shall the decision of a moment rob us of our birthright, and blast forever our noblest prospects? Forbid it, thou Great Legislator of the Universe! No:

The stars shall fade away, the sun himself
Grow dim with age, and nature sink in years;
But thou [fair liberty] shalt flourish in immortal youth,
Unhurt amidst the war of elements,
The wreck of matter, and the crush of worlds!

THE JUDGMENT.

September 17.

The Court unanimously decided *that the information was not cognizable before them.*⁹

⁹ Mr. Updike (Memoirs of the Rhode Island Bar), states the judgment of the court to have been "that the amended acts of the legislature were unconstitutional and void." And the general assembly, on their records, refer to the court as having "declared and adjudged an act of the supreme legislature of this state to be unconstitutional, and so absolutely void." But the judgment of the court appears to have been simply, "that the information was not cognizable before them." See Varnum's Report, *ante*, p. 550; and also the distinction taken by Mr. Justice Howell, *post*, p. 586; 2 Chanc. Am. Crim. Trials, 526.

**THE PROCEEDINGS OF THE GENERAL AS-
SEMBLY OF RHODE ISLAND AGAINST THE
JUDGES OF THE SUPREME COURT
FOR THEIR JUDGMENT IN THE CASE
OF TREVETT AGAINST WHEEDEN,
NEWPORT, RHODE ISLAND,
1786.**

THE NARRATIVE.

The friends of sound money were delighted at the decision of the Court (*ante*, p. 583) and amazed at the independence of a tribunal elected annually. But Trevett and his friends, deeply disappointed and enraged, left the court room muttering threats of vengeance against the Judges. And the Legislature itself learned the result with mortification and chagrin. A special session was called, and on the first day a summons was issued from both houses, requiring an immediate attendance of the Judges to assign their reasons for adjudging an act of "the Supreme Legislature of the State unconstitutional and so absolutely void." Two of the Judges came, but the other two being ill, the matter was postponed for a fortnight. At that time the Chief Justice was still ill, but the other Judges appeared, and made lengthy speeches defending their action. The Assembly then debated the question, "whether it was satisfied with the reasons given by the Judges in support of their judgment," and voted no. A motion was made to dismiss the Judges from their office, but before it was put a memorial signed by the three Judges was received, demanding a right to a trial and to counsel. The Assembly agreed to the latter request and Mr. Varnum, the counsel for the butcher, addressed them, whereupon it was moved and carried that the opinion of the Attorney-General and the lawyer members of the Assembly be heard as to whether the Judges could be re-

moved from office without a trial. The Attorney-General and several legal members having expressed their opinion in the negative, it was resolved, by a large majority, that the Judges had given no satisfactory reasons for their judgment in *Trevett* against Wheeden, but as they had not been charged with any offense, they were hereby discharged from any further attendance upon the Assembly.

This was the last of this famous controversy, as the laws which gave rise to it were soon afterwards repealed.

THE PROCEEDINGS.¹

*Before the General Assembly of the State of Rhode Island,
Newport, October, 1786.*

September 26.

A summons having been issued from both Houses of Assembly, requiring the immediate attendance of the Judges of the Supreme Court, "to render their reasons for adjudging an act of the General Assembly unconstitutional and so void," two of the judges attended today, the others being too unwell. Thereupon the Assembly postponed the hearing for a fortnight.

October 10.

JUDGES HAZARD, TILLINGHAST and HOWELL appeared today (the Chief Justice being ill) and gave notice in writing to both Houses "that they awaited their pleasure." The Assembly informed them that it was ready to receive and hear them, and certain ceremonies having been adjusted and the records of the court produced, the Judges were asked to speak.

THE DEFENSE OF THE JUDGES.

JUDGE HOWELL² said, in the first place, that the order by which the Judges were before the House might be considered as calling upon them to assist in matters of legislation, or to

¹ *Bibliography.* *Varnum's Report, see *ante*, p. 550.

² See *ante*, p. 550.

render the reasons of their judicial determination, as being accountable to the Legislature for their judgment. In the former point of view, the Court were ever ready, as constituting the legal counsellors of the state, to render every kind of assistance to the Legislature, in framing new, or repealing former laws but for the reasons of their judgment upon any question judicially before them, they were accountable only to God, and their own consciences. He then pointed out the objectionable parts of the act upon which the information was founded, and argued that it was unconstitutional, had not the force of a law, and could not be executed.

But he denied, that the Judges were accountable to that tribunal, for the reasons of their judgment. In the first place, the Legislature had assumed a fact, in their summons to the Judges, which was not justified or warranted by the records. The plea of the defendant, in a matter of mere surplusage, mentions the act of the General Assembly as "unconstitutional, and so void"; but the judgment of the Court simply is, "that the information is not cognizable before them." Hence it appears that the plea has been mistaken for the judgment.

Whatever might have been the opinion of the Judges, they spoke by their records, which admitted of no addition or diminution. They might have been influenced respectively by different reasons, as the whole act was judicially before them, of which, it being general, they could judge by inspection, without confining themselves to the particular points stated in the plea. It would be out of the power, therefore, of the General Assembly to determine upon the propriety of the Court's judgment, without a particular explanation. If this could be required in one instance, it might in all; and so the Legislature would become the supreme judiciary. A perversion of power totally subversive of civil liberty.

If it be conceded, that the equal distribution of justice is as requisite to answer the purposes of government as the enacting of salutary laws, it is evident that the judiciary power should be as independent as the legislative. And consequently

the Judges cannot be answerable for their opinion, unless charged with criminality. The nature of their office obliges them to decide upon every question that can arise in legal process. If they are not directed by their own understanding, uninfluenced by the opinion of others, how can they be said to judge at all? The very act of judging, supposes an assent of the mind to the truth or falsehood of a proposition. And if a decision is given contrary to this assent, the Judge is guilty of perjury, and ought to be rendered infamous.

Every man is excusable for errors of the head, provided sufficient attention has been paid to the means of information : but no man is excusable for depravity or corruption of the heart. The Judges may err ; for error is the lot of humanity. Perfection cannot be required of imperfect beings. But the very idea of being accountable to the Legislature, in matters of opinion, supposes the Legislature to possess the standard of perfection. A thought highly derogatory to the attributes of Deity !

Baron Montesquieu, in his *Spirit of Laws*, observes :

“There is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control ; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

Blackstone in his *Commentaries* adopted the same ideas. Sergeant Hawkins is precise and conclusive,

“that no such judge is in any way punishable for a mere error of judgment. And as the law has exempted jurors from the danger of incurring any punishment, in respect of their verdict in criminal causes, it has also freed the judges of all courts of record from all prosecutions whatsoever, except in the parliament, for anything done by them openly in such courts as judges ; for the authority of a government cannot be maintained, unless the greatest credit be given to those, who are so highly entrusted with the administration of public justice ; and it would be impossible for them to keep up in the people that veneration of their persons, and submission to their judg-

ments, without which it is impossible to execute the laws with vigor and success, if they should be continually exposed to the prosecutions of those, whose partiality to their own causes would induce them to think themselves injured. Yet if a judge will so far forget the dignity and honor of his post, as to turn solicitor in a cause which he is to judge, and privately and extrajudicially tamper with witnesses, or labor jurors, he has no reason to complain, if he be dealt with according to the same capacity to which he so basely degrades himself."

Comparing these passages together, the intention of the author is apparent, that, in the first place, the Judges are not answerable at all for mere error of judgment; and in the second, they are triable only in Parliament for matters of a criminal nature. The same point is fully asserted in Bacon:

"But though they are to judge according to the settled and established rules and ancient customs of the nation, approved for many successions of ages, yet are they freed from all prosecutions for anything done by them in court, which appears to have been an error of their judgment."

So tender and delicate is the law in this respect, that even justices of the peace are sacredly guarded from every kind of prosecution upon account of their opinion. Upon the 10th of May, 1757, a motion was made in the King's Bench³ for an information against two justices of the peace, for arbitrarily, obstinately and unreasonably refusing to grant a license to one Henry Day, to keep an inn at Eversley; where it was alleged and sworn to be fit and proper, and even necessary, that there should be an additional one (there being one there already), and for which occupation of keeping an inn this man was (as those two justices themselves had allowed on a former occasion) a proper person, they having before licensed him to do so at another place.

Lord Mansfield and Mr. Justice Denison held that notwithstanding this was a matter left in a great measure to the discretion of the justices, yet if it appeared to the Court, from sufficient circumstances laid before them, that their conduct was influenced by partial, corrupt or arbitrary

³ Rex v. Young, Burr 556.

views, instead of exercising a fair and candid discretion, the Court might call upon them to show the reasons whereby they guided their discretion.

The Justices thus entrusted have a right to judge for themselves; no man can judge for another. And this power is entrusted to them by the constitution, by the Legislature. It may be very dangerous to them to be obliged to give their reasons publicly; though they may have very sufficient ones to satisfy their own minds, and to direct their own judgments. And if they are thus entrusted, why are they liable to be called to an account by any other jurisdiction, unless they act faultily and willfully wrong? Indeed, if they do willfully wrong, let them be punished; but where they act quite conscientiously, they are not accountable to anybody.

But if it clearly appear that the Justices have been partially, maliciously or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution by indictment or information, or even, possibly, by action, if the malice be very gross and injurious.

If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished!

JUDGE TILLINGHAST said, that nothing could have induced the gentlemen of the Court to accept the office to which they were appointed, but a regard to the public good; that their perquisites were trifling, and their salaries not worth mentioning. The only recompense they expected, or could receive, was a consciousness of rectitude, which had supported them, and he was confident would support them, through every change of circumstances; melancholy indeed would be the condition of the citizens, if the Supreme Judiciary of the state was liable to reprehension, whenever the caprice or the resentment of a few leading men should direct a public inquiry. As one member of the Court, he felt himself perfectly independent, while moving in the circle of his duty; and however he might be affected for the honor of the state, he was wholly indifferent about any consequences that might possibly respect himself.

The opinion he had given resulted from mature reflection, and the clearest conviction; his conscience testified to the purity of his intentions, and he was happy in the persuasion, that his conduct met the approbation of his God.

JUDGE HAZARD. My brethren have so fully declared my sentiments upon this occasion, that I have nothing to add by way of argument. It gives me pain that the conduct of the Court seems to have met the displeasure of the administration. But their obligations were of too sacred a nature for them to aim at pleasing, but in the line of their duty. It is well known, that my sentiments have fully accorded with the general system of the Legislature in emitting the paper currency; but I never did, I never will, depart from the character of an honest man, to support any measures, however agreeable in themselves. If there could have been a prepossession in my mind, it must have been in favor of the act of the General Assembly; but it was not possible to resist the force of conviction. The opinion I gave upon the trial was dictated by the energy of truth: I thought it was right—I still think so. Be it as it may, we derived our understanding from the Almighty, and to Him only are we accountable for our judgment.

THE QUESTION CONSIDERED.

October 11.

A debate took place among the members of the Assembly, and the question being stated, “whether the Assembly was satisfied with the reasons given by the Judges in support of their judgment?” it was decided in the negative. A motion was made to dismiss the Judges from their office; but before the question was taken on this motion, the following memorial, signed by the three Judges was read:

To his Excellency the Governor, and his Honor the Speaker of the Lower House of Assembly: To be communicated to both Houses.

“The underwritten, appointed justices of the superior court, etc., at the annual election in May last, for the term of the current year,

and cited to appear before the General Assembly at their present session, by an order therefor, passed at their last session, specially convened in the city of Newport, 'to render the reasons of a certain judgment given by said court, at the last term thereof in the county of Newport,' having appeared before both houses in a grand committee, and made full communication of all the proceedings of the Court, relative to the case in which said judgment was rendered; and having entered into a full and free examination of the several parts and principles of the penal law in question, and compared them with the constitution, or fundamental laws of the state, and all other laws operating thereon, which secure to the citizens thereof their rights and privileges; and having established their observations thereon by many the most approved authorities in law, as well as by the constitution and doings of the Federal Union, and the members thereof, since the revolution in this country; for the advice and assistance of the General Assembly in point of legislation—concluded, by utterly denying the power of the legislature to call upon them for the particular reasons of their judgment in that, or any other case; and declining to render the same—alleging and maintaining, by arguments and authorities of law, that for the same they are 'accountable only to God (under the solemnities of their oath of office) and to their own consciences.' And while, to remove misapprehensions, they disclaim and totally disavow any the least power or authority, or the appearance thereof, to contravene or control the constitutional laws of the state, or acts of the general assembly—they conceive that the entire power of construing and judging of the same, in the last resort, is vested solely in the supreme judiciary of the state. And whereas, in the citation aforesaid, no charge is contained against the underwritten, in their aforesaid capacity, nor had they reason to apprehend any proceedings were to be grounded thereon, to affect their lives, liberties or property, or their estate in their office aforesaid; or their good name and character, as officers of this state:—And whereas, from appearances, there is reason to apprehend that a design is formed, and ripening for execution, by a summary vote of the Legislature, either to dismiss them from their aforesaid office, or to suspend them from the power of exercising the same:

"Wherefore, they pray that they may have a hearing by counsel before some proper and legal tribunal, and an opportunity to answer to certain and specific charges, if any such can be brought against them, before any sentence or judgment be passed, injurious to any of their aforesaid rights and privileges. And this they claim and demand as freemen, and officers of this state; and, at the same time, with deference, utterly protest against the exercise of any power in the Legislature, by a summary vote, to deprive them of their right to exercise the functions of their aforesaid office, without the aforesaid due process of law, or a commencement thereof (in which latter case a suspension only from the duties of office can take place) before the full term for which they were appointed and engaged, under the constitution of the state, shall be completed: and more especially, upon a mere suggestion of a mere error of judgment."

The memorial having been received, the Judges informed the Assembly, that they wished to be heard by counsel.

James M. Varnum,⁴ who had argued the case upon which the Court had pronounced the judgment complained of, was permitted to address the House in defense of the Court.

Mr. Varnum said that the necessity of exhibiting the memorial upon the table, arose from the motion last made by one of their honorable members, for dismissing the Judges from office, without any previous charge of criminality. A measure so novel as this motion tended to produce, could not have been foreseen or expected; and, therefore, it would not be thought strange if the counsel was not fully prepared to meet and oppose it. What do the Judges pray for? That if they are to be passed upon for anything respecting their duty, they may first know for what offense they are to be judged; that the particular charge or charges may be specified; that they may have time for defense; that they may be heard before a tribunal legally constituted; and that they may be heard by counsel.

Is there a gentleman in this Assembly so inattentive to the rights of his constituents, as to refuse, upon this occasion, what the lowest peasant, nay the vilest criminal, is entitled to receive? I presume there is not. And notwithstanding many of them may suppose that the honor of the Legislature is wounded by the decision of the Court, and so would wish to restore it, even by sacrificing the Judges; yet I am confident they will not incur the imputation of real disgrace, by removing the barriers to personal security, and the preservation of property. For if they would preserve in the minds of the citizens an attachment to their measures, and a veneration for their laws, they certainly will not openly violate the laws themselves.

Be pleased to recollect a paragraph in our declaration of rights, our Magna Charta, wherein it is provided, "that no man, of what estate and condition soever, shall be put out of

⁴ *Ante*, p. 551.

his lands and tenements, nor taken, nor imprisoned, nor disinherited, nor banished, nor any ways destroyed, nor molested, without being for it brought to answer by due course of law." If it were in the power of the General Assembly to nullify this part of our constitution (which we utterly deny) they have not done it. The right is still guarded by all the solemnities of law, and therefore the honorable remonstrants claim and demand its benefits. This they do, from your Honors, not as a legislative, but as acting in a judicial capacity; for the passing of sentence is the exercising a judiciary power, grounded upon a pre-existing law. You are bound then by that oath, to which you all submitted as a necessary qualification, previously to your becoming members; and which is in these words: "And you do farther engage equal right and justice to do to all persons that shall appeal unto you for your judgment in their respective cases."

It is perfectly immaterial upon the present argument, whether the judgment of the Court was right or wrong; whether it was agreeably to law, or against law. The only question is, whether they can, in any respect, be brought to answer for it, but by due course of law? And consequently, whether they can be passed upon and condemned, until they be proved guilty of a crime?

The tenure by which all commissions are held in this state, is for the space of one year. Consequently, during that term, every officer has an interest, a kind of estate, inseparably annexed to his appointment, to be divested of which, he must either neglect, misuse, or abuse his trust, so as to work a forfeiture. This neglect, misuse and abuse, include questions of fact, which must appear, either by the confession of the party, or by proof, before the forfeiture can be declared. But how can the facts appear to be true or false, without an impartial and candid examination? And how can such examination take place until the facts or charges are particularly stated, and the party accused have an opportunity of making defense, in such way as he shall deem most beneficial to himself? Suppose he should deny the facts, he must certainly be presumed

innocent till the contrary appear. How shall the contrary appear, but by producing evidence, oral or written? If oral, has he not a right to cross-examine the witnesses, to disqualify them, or produce others to disprove their testimony, either by destroying their credibility, or proving some other proposition totally inconsistent with that asserted by them? Or, if the evidence be written, has he not a right to suggest and establish alteration, diminution, or even forgery itself? In short, can there exist, in contemplation of law, the possibility of an accusation, that cannot be controverted, and proved to be groundless?

If the Judges held their commissions during the pleasure of the General Assembly, then indeed they might be removed without the formalities of a trial. But, even in that case, the exercise of so high a prerogative, without some kind of suggestion and proof, would be deemed injurious and oppressive. In the present case, however, wherein the Judges cannot be molested, but by being called to answer for some crime, by due course of law, there is not even a suggestion, that they have intentionally departed from the line of their duty. Then are they secured in their posts, during the term of their appointment, in as sacred a manner as the property of any individual is guarded against the encroachments of a rapacious neighbor. They stand upon the firm ground of rectitude and independence. If any man has any accusation to exhibit, let him come forth; let him produce the list of his charges; they are willing to meet him. But they will meet him only upon due and legal process, and before a court lawfully qualified to try them. Should no such accusation be made, what remains but that the Judges be immediately discharged from any further attendance upon this Assembly?

Should they be impeached, I pledge myself to show, that they cannot be tried by this honorable Assembly. But if a contrary sentiment should prevail, I must request time, till the next session to be prepared with arguments and authorities, to establish a doctrine so important in its consequences. Permit me, however, for the present, to observe, that in Eng-

land the judges are appointed by the King, as the supreme executive. Their commissions are during good behavior; and therefore they are not triable by the King, but by the Parliament only, and upon impeachment. Were they to be tried by the King, who appoints them, their judgments might be influenced by his authority; and so the channels of justice would be corrupted. Besides, the King is the party accusing, and consequently cannot be the judge; for the very act of complaining, presupposes an opinion that the party complained of is guilty. Hence it is that the grand jurors, who make presentment, are disqualified ultimately to decide upon the fact.

In this state the judges are appointed by both houses of Assembly, in a grand committee. In this respect, they resemble the King; and therefore cannot try the judges upon a criminal charge. In the present instance, both houses of Assembly are the party complaining; in this respect also, they resemble the King, and so cannot be the triers. For, with deference to the legislators present, there may be an Assembly, whose interested views might induce them to establish systems totally subversive of the constitution, and of political as well as civil liberty. To effect which, the Supreme Judiciary must be the creatures of their power; and such creatures they would finally be, were the Judges to be appointed, accused, and tried by them.

Let the human heart, and, as I have the honor of addressing myself to some who profess, and even attempt to teach the doctrines of Christianity, the conscience also, be consulted upon this question. Should not the parties litigant be equally indifferent to the Judge, who is to decide upon their controversy? Why is it, that jurors may be challenged, and removed, for favor, but that the mind should be perfectly unbiassed, and open to the reception of truth? Why, like *Cæsar's* wife, should they be incapable of being suspected, unless that the parties themselves might feel a perfect confidence in their judges? Can that confidence be placed upon this occasion? Has not the matter been taken up rather in a political

than a juridical point of view? I do not assert; but has it not been determined, in a convention of part of the members, to remove the Judges, and appoint others who will execute, at all events, the penal acts? Has not one town in particular proceeded so far, as to instruct its deputies to use their utmost influence in bringing the Judges to punishment? Can these members be considered as impartial triers? Is it possible to suppose, but that the influence of their constituents will have some weight in forming their opinion? Can they be objected to, as having prejudged the cause? If they cannot, is there not a moral certainty of condemnation? If they can, will not the objection be so far extended, as to prevent the possibility of a legal decision?

Be entreated, therefore, O ye guardians and protectors of the people, seriously to reflect upon the magnitude of the present question, and the important events that may result from your determination. "The Great Judge of all the earth, can He do wrong?" Of beings rational, He requires the "heart." And "as a man believeth in his conscience, so is he." Submit then to the heavenly standard. And, as the Judges have acquitted themselves conscientiously, in the sight of God and man, add to the general plaudit, which shall waft their names upon the wings of immortal fame, to the latest posterity.

THE DECISION.

A motion was made and agreed to, that the opinion of the Attorney General be taken, and the sentiments of the other professional gentlemen requested, whether constitutionally, and agreeably to law, the General Assembly could suspend, or remove from office the Judges of the Supreme Judiciary Court, without a previous charge and statement of criminality, due process, trial, and conviction thereon?

*William Channing*⁵ (Attorney General) observed, that as it

⁵ CHANNING, WILLIAM. (1751-1793.) Born Newport. Graduated Princeton, 1769. Studied law with Oliver Arnold, at Providence;

was at all times his duty, so he derived a peculiar pleasure, in rendering to the Legislature every legal assistance in his power. He had attended the trial upon the information, without any bias or partiality upon his mind; and was happy in the conviction, that the whole conduct of the Judges, upon that interesting occasion, demonstrated the greatest candor and uprightness; and, according to his private opinion, their determination was conformable to the principles of constitutional law. But, be their judgment agreeably to law or not, confident he was, that there would be a fatal interruption, if not annihilation to government, if they could be suspended, or removed from office, for a mere matter of opinion, without a charge of criminality. How that charge should be preferred and conducted, he did not presume to decide, as it might possibly be the subject matter of an after question, and was not contained in the present order.

Mr. Bradford^a informed the House, that he was not present at the trial in Newport, nor had he attended to the proceedings of the Legislature respecting the Judges, excepting so far as related to the citation, and the memorial upon the table; till then, he never doubted but the General Assembly were vested with constitutional authority, to try and remove any officer by them appointed, for any mal-practices in his office; but from the observations that had been made, he very much doubted the propriety of his former opinion: one point, however, was clear and certain, that as the Judges were commissioned and sworn for the term of a year, they could not be

called to the bar, 1771. He filled many honorable offices in Rhode Island. Attorney General, 1777-1787, 1791-1793. He lost his election in 1787 in consequence of his opposition to the paper money laws. United States District Attorney, 1791-1793. He was an able advocate. One of his eleven children was William Ellery Channing, D. D.

^aBRADFORD, WM. (1729-1808.) Born Plympton, Mass. Studied medicine and commenced practice in Warren. Removed to Bristol after several years and studied law. Deputy-Governor of the State, 1775-1778. For many years Speaker of the General Assembly. Senator to Congress, 1792. In 1751 married Mary Le Baron of Plymouth. Trustee Brown University, 1785-1808.

deprived of their powers during that term, but by regular impeachment, in which the charges against them must be particularly stated; a trial, in which they would have an undoubted right for time to prepare their defense, and to be heard by counsel; and condemnation, upon full proofs of the charges. In the proceedings now before the House, there was not a charge, or the appearance of one, against the Court, to which they could, in any manner, be held to answer. He was really astonished, that so much time should be taken up in needless inquiries, and fruitless altercations. He had been honored with a seat, in one or other of the houses of the Assembly, for upwards of thirty years, and could not recollect a period, in which harmony and unanimity were more essentially wanting, than at the present time. The people of this state had been well governed; they had been a happy people, and might still be as happy as any on earth, if all party contentions could be laid aside, and every one strive to soothe the cares, and heal the wounds, of his neighbors. He besought, he entreated the members to embrace the present moment, in which there seemed to be a spirit of conciliation, to put an end to all further contentions among themselves, but what might arise for the sake of information. And, as they regarded the honor, the peace, and the safety of the state, that they would discharge the Judges from any further attendance, and apply themselves in earnest, and with one mind, to such measures as would render them happy at home, and respectable abroad.

*Mr. Helme*⁷ said, that the subject was new, and he was not fully prepared to give an opinion. But at present, he inclined to think, that there was no constitutional law by which the question could be solved. It must, therefore, be in the breast of the General Assembly to point out the mode of trial by an act for that purpose, should a trial be thought necessary. If

⁷ HELME, ROUSE J. Son of James Helme, Judge of the Colonial Common Pleas Court. Practiced law in South Kingstown. Secretary to General Assembly, 1776-1777. Member of Rhode Island Assembly, 1778, 1786, 1788. Died 1789 at New Shoreham.

they should proceed to try the Judges, either by themselves, or a court to be specially appointed for that purpose, they must cause them first to be impeached, and state the facts particularly upon which the impeachment is founded. The common law would direct the manner of process; and should they be found guilty, they could not be removed from their office, but by a bill, in nature of a bill of attainder, which must pass both houses, and be enacted into a law.

*Mr. Goodwin*⁸ fully acquiesced in the opinions already given.

The matter was further discussed by *Henry Marchant*⁹ and *Benjamin Bourne*,¹⁰ who defended the positions taken by the Attorney General. It was resolved, by a very large majority, that the three Judges, having been fully heard before the Assembly, had rendered no satisfactory reasons for their judgment in the case of Trevett against Wheeden; but as they were not charged with criminality in giving their judgment, they be discharged from any further attendance upon the Assembly on that account.¹¹

⁸ GOODWIN, HENRY. (1750-1789.) Born Boston. Educated at Harvard. Studied law and opened an office at Taunton. Afterward removed to Newport. Attorney-General, 1787. "He was patronized by the paper-money party, and they made him Attorney-General of the State; but he would not go all lengths with them, and they withdrew their patronage." He died at Bristol.

⁹ *Ante*, p. 551.

¹⁰ BOURNE, BENJAMIN. First representative to Congress under the constitution. Afterwards a Circuit Judge of the United States.

¹¹ MUMFORD, PAUL. (1734-1805.) Born South Kingston, R. I. Graduated Yale, 1754, 1786, A. M. Settled in Newport. Representative General Assembly, 1774. Removed to Barrington, Mass., when British occupied Newport. Member Council of War. Deputy in General Assembly from both places. Judge Common Pleas Bristol Co., 1777. Judge Superior Court, 1778. Member Upper House, 1779-1781. Chief Justice Rhode Island, 1781-1785, 1786-1788. State Senator, 1801-1803. Lieutenant Governor, 1803-1805.

HAZARD, JOSEPH. (1728-1790.) Born South Kingston, R. I. Deputy from there, 1756. Lieutenant Colonel of Militia, Kings Co. Associate Justice Supreme Court, 1786.

THE CASE OF BREACH OF NEUTRALITY BY CITIZENS OF THE UNITED STATES, RICHMOND, VIRGINIA, 1793.

THE NARRATIVE.

A large majority of the American people heartily sympathized with the French Revolution, though Alexander Hamilton and many of the Federalists were shocked at the excesses of the Jacobins. Thomas Jefferson wrote: "rather than it should have failed I would have seen half the earth desolated," and the whole country was for a time filled with enthusiasm for the new French Republic. When in the spring of 1793 Citizen Genet¹ landed at Charleston as its first minister to the United States, the people went wild. In Philadelphia, a great banquet was held in his honor; and the head of a roast pig was named Louis XVI, passed around the table to each guest, who plunged his knife into it while uttering some sentiment about liberty and the rights of man. The French craze was everywhere and Americans of every class imitated the Revolutionists in Paris, by wearing the cockade, erecting liberty poles and addressing men as Citizen and women as Citizeness.

An important part of Citizen Genet's mission was to ask the United States to join France in the war just declared between the Republic and Great Britain and other European

¹ GENET, EDMOND CHARLES. (1765-1834.) Born Versailles, France. Known as "Citizen Genet." for the French had abolished all titles except Citizen and Citizeness. Was recalled in 1794, but never went back to France. His friends, the Girondins, had fallen from power, and the leaders had been guillotined by the Jacobins. He became an American citizen, married a daughter of Governor Clinton, settled on the Hudson, became a scientific farmer and died at his home there. He was only twenty-eight when he arrived in America, but had already made a name for himself in annexing Geneva to the French Republic.

States. France had reason to expect this—for she had helped to win our independence and by a treaty between the two countries made at the close of that war, we had guaranteed forever the French possessions in America; each country had agreed to shelter in its ports the privateers and prizes of the other and that no other country should have the right to fit out ships in the ports of France or the United States. Genet proceeded at once to commission every French Consul in the United States as a Court of Admiralty to try and condemn such prizes as French cruisers might bring into port and to fit out privateers in our chief harbors. But President Washington was determined that the country should take no hand in European wars, and he at once issued the first Neutrality proclamation that the country had known. In it he called on all good citizens to take no part in aiding or abetting either of the belligerent powers, warning them if they did, they would be prosecuted to the full extent of the law. Washington's position was most unpopular. The Republican party not only took the side of Genet against the Administration, but its newspapers attacked his character most violently, charging that he had sold himself to the English, and "for the first time the popularity of Washington suffered a partial eclipse." But he was immovable, for he saw that the position of the new nation in the affairs of the world must be established at the outset, and he was convinced that the Republic would be short lived if it did not absolutely refuse to take any hand in the political quarrels and wars of Europe. As to the Treaty of 1778, that he argued was made with the French King, who had been guillotined and had no successor, and as a treaty of alliance should be construed to refer only to defensive wars, and France was raging an offensive war. Chief Justice Jay was sent to Richmond to declare to the country the law on the subject, but the first prosecution which took place in the State of Pennsylvania failed utterly.² This charge, though it was

² 2 Elson Hist. U. S. 198.

³ See *Henfield's Case*, *post*, p. 615.

not delivered to the particular Grand Jury by whom the first indictment for violation of American neutrality was found, yet was prepared by the Chief Justice of the United States as a notice to the citizens of the country and as a guide to the prosecuting officers and courts throughout the Republic.

THE PROCEEDINGS.

In the Circuit Court of the United States, Middle District of Virginia, Richmond, May, 1793.⁴

May 22.

CHIEF JUSTICE JAY.⁵ Gentlemen of the Grand Jury: That citizens and nations should use their own as not to injure others, is an ancient and excellent maxim; and is one of those plain precepts of common justice, which it is the interest of all, and the duty of each to obey, and that not only in the use they may make of their property, but also of their liberty, their power and other blessings of every kind.

To restrain men from violating the rights of society and of one another, and impartially to give security and protection to all, are among the most important objects of a free government. I say a free government, because in those that are

⁴ This prosecution, which is always cited as the earliest case on the subject of the common law jurisdiction of the Federal courts, and was considered of so much importance by General Washington, as to justify a special meeting of Congress, and by Mr. Jefferson as to require a distinct explanation to the British government, is now for the first time reported. The charges of Chief Justice Jay and Judge Wilson were printed by the government for the purpose of explaining abroad the position of the United States, but they have never yet been published to the public. Dr. Wharton, however, among the papers of Mr. Rawle, who, as District Attorney, conducted the prosecution; and those of Mr. Duponceau, who, with Mr. Sergeant and Mr. Ingersoll, were counsel for the defense, was able to find a complete report. Wharton, *State Trials*, *post*, p. 616.

⁵ JAY, JOHN. (1745-1829.) Born New York City. Delegate Continental Congress, 1774-1777. Chief Justice New York, 1777-1779. President of Congress. Secretary of State. Chief Justice Supreme Court of the United States, 1789-1794. Resigned to accept the mission to England where he negotiated the Jay Treaty. Governor of New York, 1795-1801.

not free, these objects being in certain respects secondary to others are less regarded, and less perfectly provided for. Where the conduct of the citizens is regulated by the laws made by themselves and for their common benefit, and executed by men deriving authority from, and responsible to them, the most regular and exact obedience to those laws is to be expected, required and rendered. By their constitution and laws the people of the United States have expressed their will, and their will so expressed must sway and rule supreme in our republic. It is in obedience to their will, and in pursuance of their authority, that this Court is now to dispense their justice in this district; and they have made it your duty, gentlemen, to inquire whether any and what infractions of their laws have been committed in this district, or on the seas, by persons in or belonging to it. Proceed, therefore, to inquire accordingly, and to present such as either have, or shall come to your knowledge.

That you may perceive more clearly the extent and objects of your inquiries, it may be proper to observe that the laws of the United States admit of being classed under three heads of descriptions:

First. All treaties made under the authority of the United States.

Second. The laws of nations.

Third. The constitution, and statutes of the United States.

Treaties between independent nations are contracts or bargains which derive all their force and obligation from mutual consent and agreement; and consequently, when once fairly made and properly concluded, cannot be altered or annulled by one of the parties, without the consent and concurrence of the other. Wide is the difference between treaties and statutes—we may negotiate and make contracts with other nations, but we can neither legislate for them, nor they for us; we may repeal or alter our statutes, but no nation can have authority to vacate or modify treaties at discretion. Treaties, therefore, necessarily become the supreme law of the

land, and so they are very properly declared to be by the sixth article of the constitution.

Whenever doubts and questions arise relative to the validity, operation or construction of treaties, or of any articles in them, those doubts and questions must be settled according to the maxims and principles of the laws of nations applicable to the case.

The peace, prosperity, and reputation of the United States, will always greatly depend on their fidelity to their engagements; and every virtuous citizen (for every citizen is a party to them) will concur in observing and executing them with honor and good faith; and that, whether they be made with nations respectable and important, or with nations weak and inconsiderable, our obligation to keep our faith results from our having pledged it, and not from the character or description of the state or people, to whom, neither impunity nor the right of retaliation can sanctify perfidy; for although perfidy may deserve chastisement, yet it can never merit imitation.

2. As to the laws of nations—they are those laws by which nations are bound to regulate their conduct towards each other, both in peace and war. Providence has been pleased to place the United States among the nations of the earth, and therefore, all those duties, as well as rights, which spring from the relation of nation to nation, have devolved upon us. We are with other nations, tenants in common of the sea—it is a highway for all, and all are bound to exercise that common right, and use that common highway in the manner which the laws of nations and treaties require.

On this occasion, it is proper to observe to you, gentlemen, that various circumstances and considerations now unite in urging the people of the United States to be particularly exact and circumspect in observing the obligation of treaties, and the laws of nations, which, as has been already remarked, form a very important part of the laws of our nation. I allude to the facts and injunctions specified in the President's late proclamation; it is in these words:

"Whereas, it appears that a state of war exists between Austria,

Prussia, Sardinia, Great Britain, and the United Netherlands of the one part, and France of the other, and the duty and interest of the United States, require that they should with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers:

"I have, therefore, thought fit by these presents, to declare the disposition of the United States to observe the conduct aforesaid towards these powers respectively, and to exhort and warn the citizens of the United States, carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

"I do hereby make known, that whosoever of the citizens of the United States, shall render himself liable to punishment or forfeiture, under the law of nations, by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to them those articles which are deemed contraband, by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture: and farther, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all persons who shall within the cognizance of the Courts of the United States, violate the law of nations, with respect to the powers at war, or any of them."

By this proclamation, authentic and official information is given to the citizens of the United States:

That war actually exists between the nations mentioned in it:

That they are to observe a conduct friendly and impartial towards the belligerent powers:

That offenders will not be protected, but on the contrary, prosecuted and punished.

The law of nations, considers those as neutral nations "who take no part in the war, remaining friends to both parties, and not favoring the arms of one to the detriment of the other"; and it declares that a "nation, desirous safely to enjoy the conveniences of neutrality, is in all things to show an exact impartiality between the parties at war; for should he, when under no obligation, favor one to the detriment of the other, he cannot complain of being treated as an adherent and confederate of his enemy, of which no nation would be the dupe if able to resent it."

The proclamation is exactly consistent with and declaratory of the conduct enjoined by the law of nations.

It is worthy of remark that we are at peace with all these belligerent powers not only negatively in having war with none of them, but also in a more positive and particular sense by treaties with four of them.

By the first article of our treaty with France it is stipulated that "there shall be a firm, inviolable and universal peace, and true and sincere friendship between his Most Christian Majesty, his heirs and successors, and the United States; and between the countries, islands, cities and towns situate under the jurisdiction of his Most Christian Majesty and of the United States, and the people and inhabitants of every degree, without exception of persons or places."

By the first article of our treaty with the United Netherlands, it is stipulated that "there shall be a firm, inviolable and universal peace, and sincere friendship between their High Mightinesses, the Lords and States General of the United Netherlands and the United States of America, and between the subjects and inhabitants of the said parties, and between the countries, islands and places situate under the jurisdiction of the said United Netherlands and the United States of America, their subjects and inhabitants of every degree, without exception of persons or places."

The definitive treaty of peace with Great Britain began with great solemnity, in the words following: "In the name of the most holy and undivided Trinity." By the seventh article of this treaty it is stipulated that "there shall be a firm and perpetual peace between his Britannic Majesty and the United States, and between the subjects of the one and the citizens of the other."

By the first article of our treaty with Prussia it is stipulated that "there shall be a firm, inviolable and universal peace and sincere friendship between his Majesty, the King of Prussia, his heirs, successors and subjects on the one part, and the United States of America and their citizens on the other, without exception of persons or places."

By the laws of nations, the United States, as a neutral power, are bound to observe the line of conduct indicated by

the proclamation towards all the belligerent powers, and that although we may have no treaties with them. But with respect to France, the United Netherlands, Great Britain and Prussia, the before-mentioned articles in our treaties with them, create additional obligations, to-wit: all those obligations which result from express compact and from national faith, mutually, explicitly and solemnly pledged. Surely no engagements can be more wise and virtuous than those whose direct object is to maintain peace and to preserve large portions of the human race from the complicated evils incident to war. While the people of other nations do no violence or injustice to our citizens, it would certainly be criminal and wicked in our citizens, for the sake of plunder, to do violence and injustice to any of them.

The President, therefore, has with great propriety declared "that the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers."

A celebrated writer on the law of nations very justly observes that "as nature has given to man the right of using force only when it becomes necessary for their defense, and the preservation of their rights, the inference is manifest that since the establishment of political societies, a right so dangerous in its exercise no longer remains with private persons, except in those kind of rencontres, where society cannot protect or defend them.

"In the bosom of society, public authority decides all differences of the citizens, represses violence and checks the impulse of revenge. It would be too dangerous to give every citizen the liberty of doing himself justice against foreigners, as every individual of a nation might involve it in a war, and how could peace be preserved between nations if it was in the power of every man to disturb it? A right of so great moment, the right of judging whether a nation has a real cause of complaint, whether its case allows of using force, and having

recourse to arms; whether prudence admits, and whether the welfare of the state demands it; this right," he says, "can only belong to the body of the nation, or to the sovereign its representative. It is doubtless one of those without which there can be no salutary government."

It is on these and similar principles that whoever shall render himself liable to punishment or forfeiture, under the law of nations, by committing, aiding or abetting hostilities forbidden by his country, ought to lose the protection of his country against such punishment or forfeiture. But this is not all, it is not sufficient that a nation should only withdraw its protection from such offenders, it ought also to prosecute and punish them. The same writer very justly remarks that "the nation or sovereign ought not to suffer the citizens to do any injury to the subjects of another state, much less to offend the state itself; and that not only because no sovereign ought to permit those who are under his command to violate the precepts of the law of nature which forbids all injuries, but also because nations ought to respect each other, to abstain from all abuse, from all injury, and, in a word, from everything that may be of prejudice to others. If a sovereign who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, he does no less injury to that nation than if he injured them himself. In short, the safety of the state and that of human society require this attention from every sovereign. If you let loose the reins of your subjects against foreign nations, these will behave in the same manner to you, and instead of that friendly intercourse which nature has established between all men we should see nothing but one nation robbing another."

The respect which every nation owes to itself imposes a duty on its government to cause all its laws to be respected and obeyed, and that not only by its proper citizens, but also by those strangers who may visit and occasionally reside within its territories. There is no principle better established than that all strangers admitted into a country, are, during their

residence, subject to the laws of it; and if they violate the laws they are to be punished according to the laws; the design of pains and penalties being to render the laws respected and to maintain order and safety. Hence, it follows that the subjects of belligerent powers are bound, while in this country, to respect the neutrality of it, and are punishable in common with our own citizens for violations of it, within the limits and jurisdiction of the United States.

It is to be remembered, that every nation is, and ought to be, perfectly and absolutely sovereign within its own dominions, to the entire exclusion of all foreign power, interference and jurisdiction, whether attempted by a foreign prince, or by his subjects, with or without his order. "It is a manifest consequence of the liberty and independence of nations, that all of them have a right to be governed as they think proper, and that none have the least authority to interfere in the government of another state. Of all the rights that can belong to a nation, sovereignty is doubtless the most precious, and that which others ought the most scrupulously to respect, if they would not do it an injury."

These are general principles—the laws to which they apply are numerous, and need not be particularized in detail—on the present occasion, it will be sufficient to lead your attention to one or two, which will serve to explain the reason and extent of these principles.

"The right of levying soldiers is a sovereign right belonging only to the nation. No foreign power can lawfully exercise it without permission, nor without previous permission can such attempts be otherwise regarded, than as improper interferences with the sovereignty of the country; on this head the law of nations is explicit. It declares,

"That the right of levying soldiers belongs solely to the nation: this important power is the appendage of the sovereign; it makes a part of the supreme prerogative. No person is to enlist soldiers in a foreign country without the permission of the sovereign. They who undertake to enlist soldiers in a foreign country, without the sovereign's permission, or

alienate the subjects of another, violate one of the most sacred rights both of the prince and the state; it is a crime punished with great severity in every policed state. Foreign recruiters are hanged immediately, and very justly, as it is not to be presumed, that their sovereign ordered them to commit the crime; and if he did, they ought not to have obeyed his order, their sovereign having no right to command what is contrary to the law of nature; usually they who have practiced seduction only are severely punished. But if it appears that they acted by order of the sovereign, such a proceeding in a foreign sovereign is justly considered as an injury, and as a sufficient cause for declaring war against him, unless he condescends to make suitable reparation."

From the observations which have been made, this conclusion appears to result, viz.: That the United States are in a state of neutrality relative to all the powers at war, and that it is their duty, their interest, and their disposition to maintain it: that, therefore, they who commit, aid, or abet hostilities against these powers, or either of them, offend against the laws of the United States, and ought to be punished; and consequently, that it is your duty, gentlemen, to inquire into and present all such of these offenses as you shall find to have been committed within this district.

What acts amount to committing, or aiding, or abetting hostilities, must be determined by the laws and approved practice of nations, and by the treaties and other laws of the United States relative to such cases. I doubt the expediency of anticipating such cases, and endeavoring now to distinguish acts which do, from others which do not, involve the criminality in question. Singular cases may arise. If, in the course of your inquiries, you should experience difficulties, the Attorney General and, if necessary, the Court, will assist you.

Before I dismiss this subject, it cannot be improper to remark, that a state of neutrality leaves us perfectly at liberty to exercise every humane, benevolent, and friendly office towards the powers at war and their subjects; and to continue our usual commerce with them, excepting only those offices

and that kind of trade, which may be designed and calculated to give to one party a military preponderancy to the detriment of the others. While we contemplate with anxiety and regret the desolation and distress which a war so general and so inflamed will probably spread over more than one country, let us with becoming gratitude wisely estimate and cherish the peace, liberty, and safety with which the Divine Providence has been pleased so liberally to bless us. By the favor of Heaven, we this day enjoy a degree of prosperity unknown to any other nation in the world—let it be among our enjoyments to render our happiness instrumental in alleviating the misfortunes to which many have already been, and more will yet be, reduced by those national contentions—in a word—let us be faithful to all—kind to all—but let us also be just to ourselves.

The people of the United States have exhibited too many proofs of virtue and intelligence, to leave room to doubt their continuing to be so guided by their usual integrity and good sense—but in every nation individuals will always be found who, impelled by avarice or ambition, or by both, will not hesitate to gratify those passions at the expense of the blood and tears even of those who are free from blame. Such men are to be restrained only by fear of punishment. There is, however, another consideration connected with the subject which merits much attention. It is natural in all contests, even for the best men, to take sides, and wish success to one party in preference to the other, our wishes and partialities becoming inflamed by opposition, often cause indiscretions, and lead us to say and to do things that had better have been omitted. It is not certain that the irritability of the belligerent powers, combined with some indiscretions on our part, will not involve us in war with some of them.

Prudence directs us to look forward to such an event, and to endeavor not only to avert, but also to be prepared for it. Among our preparations, there can be none more important than union and harmony among ourselves. It is very desirable, that such an event do not find us divided into parties,

and particularly into parties in favor of either foreign nation. Should this be the case, our situation would be dangerous as well as disgraceful. While blessed with union in sentiments and measures relative to national objects, we shall have little to fear; and, therefore, it is sincerely to be wished that our citizens will cheerfully and punctually do their duty to every other nation, but at the same time carefully avoid becoming partisans of any of them.

There is not a history of any nation which does not record the mischiefs they experienced from such parties, and they rarely present us with an instance of a nation being conquered and subjugated, without the detestable aid of its own degenerate or deluded citizens. Nothing is more certain than, that if such parties should arise among the people, they will find their way into every department of government, and carry distrust and discord with them—dark and dreary would then be the prospect before us, and we should in vain look for the speedy return of those happy days, when the government was peacefully, wisely and prosperously administered, under the care and auspices of a patriot, in whom the United States have by repeated unanimity in their suffrages, manifested a degree of confidence, no less reputable to their own wisdom and virtue than to his.

But, if neither integrity nor prudence on our part should prove sufficient to shield us from war, we may then meet it with fortitude, and a firm dependence on the Divine protection; when ever it shall become impossible to preserve peace by avoiding offenses, it will be our duty to refuse to purchase it by sacrifices and humiliations, unworthy of a free and unanimous people, either to demand or submit to. The subject presented by the proclamation, appeared to me to be highly interesting, and I thought it useful to treat it with much plainness, as well as latitude. I was aware that I was treading on delicate ground; but as the path of my duty led over it, it was incumbent on me to proceed.

On the third branch of the laws of the United States, viz.: their constitution and statutes, I shall be concise.

Here, also, one great unerring principle, viz.: the will of the people, will take the lead.

The people of the United States, being by the grace and favor of heaven, free, sovereign and independent, had a right to choose the form of national government which they should judge most conducive to their happiness and safety. They have done so, and have ordained and established the one which is specified in their great and general compact or constitution—a compact deliberately formed, maturely considered, and solemnly adopted and ratified by them. There is not a word in it but what is employed to express the will of the people; and what friend of his country, and the liberties of it, will say that the will of the people is not to be observed, respected and obeyed? To this general compact every citizen is a party, and consequently, every citizen is bound by it. To oppose the operation of this constitution and of the government established by it, would be to violate the sovereignty of the people, and would justly merit reprehension and punishment.

The statutes of the United States, constitutionally made, derive their obligation from the same source, and must bind accordingly. Happy would it be for mankind, and greatly would it promote the cause of liberty and the equal rights of men, if the free and popular government which from time to time may result, should be so constructed, so balanced, so organized and administered, as to be evidently and eminently productive of a higher and more durable degree of happiness than any of the other forms. It is not sufficient to tell men by a bill of rights, that they are free, that they have equal rights, and that they are entitled to be protected in them; men will not believe they are really free, while they experience oppression—they do not think their title to equal rights realized until they enjoy them; nor will they esteem that a good government, whatever may be its name, which does not uniformly, impartially and effectually protect them.

The more free the people are the more strong and efficient ought their government to be, and for this plain reason that it

is a more arduous task to make and keep up the fences of law and justice about twenty rights, than about five or six; and because it is more difficult to fence and restrain men who are unfettered than men who are in yokes and chains. Being a free people, we are governed only by laws and those of our own making—these rules are rules for regulating the conduct of individuals and are established according to and in pursuance of that contract which each citizen has made with the rest, and all with each. He is not a good citizen who violates his contract with society, and when society execute their laws, they do no more than the due operation and observance of which the common good and welfare of the community depend; for the object of it is to secure to every man what belongs to him as a nation; and by increasing the common stock of property, to augment the value of his share in it. Most essentially, therefore, is it the duty and interest of us all that the laws be observed and irresistibly executed. I might now proceed to call your attention to certain statutes which merit particular attention, and it would not be difficult to place them in points of view, in which their importance to the public would appear in strong lights—but having already detained you so long, and these subjects not being new to you, I will forbear enlarging on them on the present occasion.

The manner in which you are to fulfil the duties now incumbent on you, is specified in the oath you have taken.

The experience of ages commends the institution of grand juries; it has merited and received constant encomiums, and I trust, gentlemen, that your conduct on this and similar occasions, will afford new proofs of its utility and excellence.

THE TRIAL OF GIDEON HENFIELD FOR ENLISTING IN A FRENCH PRIVATEER, PHILADELPHIA, 1793.

THE NARRATIVE.

The sympathy of one of the great political parties of the country and of the great majority of the people for France was at its height, when the first trial came on at Philadelphia to test the power of the government to enforce Washington's proclamation of neutrality. Two sailors on board a French privateer, who had enlisted in an American port, Gideon Henfield and John Singletery, were indicted. They were American citizens and came clearly within the proclamation. On the day of the trial the latter could not be found and Henfield was put at the bar and a jury impanelled. The evidence was clear and the judges so instructed the jury, but they were out but a few minutes, when they returned with a verdict of not guilty. The result was received with cheers, for the jury had spoken the common sentiment of the city and country. A dinner was given to "Citizen" Henfield that evening, at which the French Minister announced that the "citizen" had been formally taken under the protection of the French Republic.¹

There was another reason than the French sympathy which brought about the acquittal. Not only did the people think the proclamation unwise, but a large number of lawyers and writers were arguing in every newspaper that it was unconstitutional as well. The constitution, they said, gave the President no power to make war or to make peace or to ap-

¹ Unfortunately, however, for Henfield, this "protection" was not very potent, for, elated with the honor of French citizenship, he sallied forth in a new excursion, which resulted in his capture by a British cruiser. Wharton, p. 89 *note*.

point ministers without the consent and approval of the Senate. "If he should of his own will say to France, 'the United States will side with you in this conflict, send you troops, loan you money and equip your ships,' would not every one in the country at once cry out that the President had no power to say such things, that he was really declaring war with England? If then he has no power to say to France, 'we will side with you,' what right has he to say, 'we will not side with you, we will be neutral?' He has simply no right. Such matters rest with Congress, and he ought plainly to have first consulted Congress.'"²

THE TRIAL.³

In the Circuit Court of the United States, District of Pennsylvania, Philadelphia, July, 1793.

HON. JAMES WILSON, ⁴	} <i>Justices.</i>
HON. JAMES IREDELL, ⁵	
HON. RICHARD PETERS, ⁶	

July, 22.

On this day, MR. JUSTICE WILSON charged the Grand Jury for the Pennsylvania District as follows:

Gentlemen of the Grand Jury: It is my duty to explain to you the very important occasion on which this court is specially convened

² 2 McMaster Hist. People U. S. 120.

³ *Bibliography.* *"State Trials of the United States, during the administrations of Washington and Adams, with references, Historical and Professional and Preliminary Notes on the Politics of the Times. By Francis Wharton, author of a Treatise on American Criminal Law, etc. Philadelphia: Carey & Hart, 126 Chestnut street. 1849."

⁴ WILSON, JAMES. (1742-1798.) Born in Scotland. A signer of the Declaration of Independence. Delegate to Continental Congress, 1775-1787. Associate Justice Supreme Court of the United States, 1789-1798.

⁵ IREDELL, JAMES. (1750-1799.) Born in England. Associate Justice Supreme Court of the United States, 1790-1799.

⁶ PETERS, RICHARD. (1744-1828.) Born Philadelphia. Graduated College (now University) of Pennsylvania. Admitted to bar, 1763. Registrar in Admiralty, 1771. Resigned at outbreak of Revolution.

and to state the points of law not less important to the application of which that occasion gives rise.

To the Judge of the Pennsylvania District, information was given on oath that certain citizens of the United States had acted in several capacities as officers on board an armed schooner, said to be commissioned by France as a cruiser or private ship-of-war; and with others on board that schooner did capture and make prize of several ships or vessels belonging to his Britannic Majesty, and otherwise assist in an hostile manner in annoying the commerce of the subjects of his said Britannic Majesty, who is at peace with the United States, contrary to their duty as citizens of the United States.

On receiving this information the Judge issued his warrant for apprehending the persons against whom complaint was made, that they might answer for their doings in the premises, and be dealt with according to law.

That legal proceedings in this and some other business might be had speedily, one of the Judges of the Supreme Court of the United States and the Judge of the Pennsylvania District issued their warrant, directing that on this day, and at this place a special session of the Circuit Court for this district should be held, and that Grand and Traverse Jurors should be summoned to attend it. As the Court however is authorized generally to try criminal causes, if any other crimes or offenses cognizable in it be laid before you or are in your knowledge, it is your duty to present them. But to the business to which you have been particularly called, and to articles intimately connected with it, I shall confine the remarks which I have to give you in charge.

I introduce them by noticing, with pleasure, the near and endearing relation between the freedom and the dignity of man. In governments unfavorable to both, treaties and the construction of treaties are numbered among the *arcana imperii*, the secrets of empire, enclosed within the cabinets of princes and secluded from the judgment of the citizens, whose lives and fortunes however they chiefly affect; under our national Constitution, treaties compose a portion of the public and supreme law of the land, and for their construction and enforcement are brought openly before the tribunals of our country. Of those tribunals Juries form an essential

Was officer in Continental Army. Member Continental Board of War and Commissioner of War, 1776-1781. Member of Congress, 1782; of State Assembly, 1787; Speaker of Assembly, 1788; Speaker of Senate, 1791. United States District Judge, District of Pennsylvania, 1792. Was active in securing the British Act of Secession for the Episcopal Church in America and went to England to secure the ordination of American Bishops. Was reporter of the Pennsylvania Admiralty Decisions (1780-1807), and the father of the Reporter of the Supreme Court of the United States Decisions. He was born and died on his estate "Belmont," which is now a part of Fairmont Park, Philadelphia.

part; under the construction given by those Juries, treaties will suffer neither in their importance nor in their sanctity.

Sapientissima res tempus—says the profound Bacon in one of his aphorisms, concerning the augmentation of the sciences—time is the wisest of things. If the qualities of the parent may be expected in the offspring, the common law, one of the noblest births of time, may be pronounced the wisest of laws.

This expression, says a great lawyer (Finch on Law), is not new and strange, or barbarous and peculiar to England. It is the proper term for other laws also. Euripides mentions the common laws of Greece; and Plato defines common law to be that, which being taken up by the common consent of a country, is called law. In another place the same illustrious philosopher names it the golden and sacred rule of reason which we call common law.

To the common law of England, however, the phrase is often peculiarly appropriated. Of this common law, the antiquity is unquestionably very high. But the precise era of its commencement, and the several springs from which it originally flowed, it is very difficult, if not altogether impracticable to trace. One reason for this may be drawn from the very nature of a system of common law. As it is accommodated to the situation and circumstances of the people; and as that situation and those circumstances insensibly change, a proportioned variation of laws insensibly takes place; and it becomes impossible to ascertain the period when this change began, or to mark the different steps of its progress.

It might be amusing and instructive, but at this time it would be improper, to sketch the general outlines of the system through the government of the Saxons down to the conquest of the Normans. Suffice it to observe, and the observation is important, that the common law, as now received in America, bears, in its principles and in many of its more minute particulars, a stronger and a fairer resemblance to the common law as it was improved under the former, than to that law as it was disfigured under the latter.

The accommodating principle of a system of common law will adjust its improvement to every grade and species of improvement, in consequence of practice, commerce, observation, study or refinement. As the science of legislation is the most noble, so it is the most slow and difficult of sciences. Willing to avail itself of experience, it receives additional improvement from every new situation to which it arrives; and in this manner attains, in the progress of time, higher and higher degrees of perfection, resulting from the accumulated wisdom of ages.

On some occasions the spirit of a system of common law is accommodating; but on others its temper is decided and firm. The means are varied according to times and circumstances, but its great ends are kept steadily and constantly in view.

How effectually has the spirit of liberty animated this system in all the vicissitudes, revolutions and dangers to which it has been exposed! In matters of a civil nature the common law works itself pure by rules drawn from the fountain of justice. In matters of a

political nature it works itself pure by rules drawn from the fountain of freedom.

It was this spirit which dictated the frequent and formidable demands on the Norman princes, for the complete restoration of the Saxon jurisprudence. It was this spirit which, in *Magna Charta*, manifested a strict regard to the rights of the Commons as well as those of the Peers. It was this spirit which extracted sweetness from all the bitter contentions between the rival houses of York and Lancaster. It was this spirit which preserved England from the haughtiness of the Tudors and from the tyranny of the Stuarts. It was this spirit which rescued the States of America from the oppressive claims and from all the mighty efforts made to enforce the oppressive claims of a British Parliament.

The common law, says my Lord Coke (*Calvin's case*, 6 Rep. 88), is a social system of jurisprudence. She receives other laws and systems into a friendly correspondence; and associates to herself those who can give her information, or advice, or assistance. Does a contract bear a peculiar reference to the local laws of any particular foreign country? By the local laws of that foreign country the common law will direct the contract to be interpreted and adjusted. Does a mercantile question occur? She determines it by the law of merchants. Does a question arise before her, which properly ought to be resolved by the law of nations? By that law she will decide the question. For that law in its full extent is adopted by her. The infractions of that law form a part of her code of criminal jurisprudence.

In our present business, gentlemen, this great subject deserves a full and a pointed illustration. Such as it is in my power, on a short notice, to give, I now proceed to lay before you.

The law of nature when applied to States of political societies, receives a new name, that of the law of nations. But though it receives a new appellation, it retains unimpaired its qualities and its powers. The law of nations as well as the law of nature, is of obligation indispensable. The law of nations as well as the law of nature is of "origin divine." There are, it is true, laws of nations—perhaps it is to be wished that they were designated by another name—there are laws of nations which are founded altogether on human consent; of this kind are national treaties. But the municipal laws of a State are not more distinct from the law of nature than those consensual laws of nations are in their source and power distinct from the law of nations properly so called. Indeed those consensual laws of nations are not less controlled by the law of nations properly so called, than municipal laws are controlled by the law of nature. The law of nations is the law of states and sovereigns. On states and sovereigns it is obligatory in the same manner and for the same reasons, as the law of nature is obligatory upon individuals. Universal and unchangeable is the obligation of both. How great, how important, how interesting are these truths! They announce to a free people how solemn their duties are! If a practical knowledge and a just sense of those duties

were diffused universally among the citizens, how beneficial and lasting would the fruits be!

It seems to have been thought that the law of nations respects and regulates their conduct only in their intercourse with each other. A very important branch of this law containing the duties which a nation owes to itself, has in a great measure escaped attention. Of a state, as well as of an individual, self-preservation is a primary duty. To love and to deserve an honest fame is another duty of a state as well as of a man. To a state as well as to a man, reputation is a valuable and an agreeable possession. It represses hostility and secures esteem.

In transactions with other nations, the dignity of a state should never be permitted to suffer the smallest diminution. Need it be mentioned here, that happiness is the centre to which states as well as men are universally attracted! To consult its own happiness, therefore, is the duty of a nation. When men have formed themselves into a political society, they may reciprocally enter into particular engagements and contract new obligations in favor of the community or of its members. But they cannot, by this union, discharge themselves from any duties which they previously owed to those who form a part of the political association. Under all the obligations due to the universal society of the human race, the citizens of a state still continue. To this universal society it is a duty that each nation should contribute to the welfare, the perfection and the happiness of the others. If so, the first degree of this duty is to do no injury. Among states as well as among men, justice is a sacred law. This sacred law prohibits one state from exciting disturbances in another, from depriving it of its natural advantages, from calumniating its reputation, from seducing its citizens, from debauching the attachment of its allies, from fomenting or encouraging the hatred of its enemies.

But nations are not only prohibited from doing evil, they are also commanded to do good to one another. On states as well as individuals the duties of humanity are strictly incumbent; what each is obliged to perform for others, from others it is entitled to receive. Hence the advantage as well as the duty of humanity. It may be uncommon, but it is unquestionably just to say, that nations ought to love one another. From the pure source of benevolence the offices of humanity ought to flow. By a nation these enlarged and elevated virtues should be cultivated with peculiar assiduity and ardor; of an individual, however generous his disposition may be, the sphere of exertion is frequently narrow; but of a nation this sphere is comparatively boundless. By exhibiting a glorious example in her constitution, in her laws, and in the administration of her constitution and laws, she may diffuse instruction, she may diffuse reformation, she may diffuse happiness over the whole terrestrial globe.

These maxims of national law, though the sacred precepts of nature, and of nature's God, have been too often unknown and unacknowledged by nations. Even where they have been known and

acknowledged, their calm still voice has been drowned by the clamors of ambition and by the thunder of war.

Is it then unnecessary or improper here to say, peace should be deemed the basis of the happiness of nations, "peace on earth!" This is a patriotic as well as an angelic wish. But with war and rumors of war our ears in this imperfect state of things are still assailed. Into this unnatural state ought a nation to suffer herself to be drawn without her own act, or the act of him or them, to whom for this purpose she has delegated her power? Into this unnatural state should a nation suffer herself to be drawn by the unauthorized, nay by the unlicensed conduct of any of her citizens?

These, gentlemen, are questions to which you are now called to give the closest and deepest attention. That a citizen, who in our state of neutrality, and without the authority of the nation, takes an hostile part with either of the belligerent powers, violates thereby his duty, and the laws of his country, is a position so plain as to require no proof, and to be scarcely susceptible of a denial.

Under the treaty of amity and commerce between the United States and France, it may be made a question, whether the privateers of that power have a right to "fit out their ships in our ports." This question arises from the twenty-second article of that treaty. "It shall not be lawful for any foreign privateers, not belonging to the subjects of his most Christian majesty, nor citizens of the United States, who have commissions from any other prince or state in enmity with either nation to fit out their ships in the ports of either the one or the other of the aforesaid parties."

It may be alleged, that this prohibition against fitting the ships of privateers belonging to any other nation implies a permission to fit the ships of privateers belonging to France. But this inference cannot justly be drawn. If, by a promise made to one person, I restrain myself from lending money to any others, I am not surely by that restraining engagement, obliged to lend my money to him. It may be convenient, it may be necessary for me to reserve its application exclusively for my own purposes. In the same manner, by a stipulation, that in a war between France and Britain, we will not lend the use of our ports to the privateers of the latter, we are by no means obliged to lend it to those of the former. It may be convenient, it may be necessary for us to refuse it to both.

True it is, that by the treaty we are obliged to refuse it to Britain, and this to one of the parties was probably an important object. But it remains in our option whether we will or will not grant it to France. Both the nations which made this treaty, might have the most unexceptionable, nay, the most commendable motives for reserving to themselves this option. France, particularly, might have the strongest reasons for refusing to bind herself, at all events, to permit even the United States to fit out in her ports privateers against any nation however united to her by compact, with which the United States might be at war.

This option, perhaps with France a favorite one, each of the parties to the treaty reserved the power of making. This option our

nation, or its representatives for that purpose, have not yet made. This option private citizens are certainly unauthorized and unwarranted to make. Private citizens, therefore, assisting in a business of this kind, offend the law, and for their offenses are amenable to the justice of the nation. If you know of any such, it is your duty to present them here.

In some instances citizens may be accountable for the conduct of their nation. In other instances the nation may be accountable for the conduct of its citizens.

It is impossible indeed that even in the best regulated state, the government should be able to superintend the whole behavior of all the citizens and to restrain them within the precise limits of duty and obedience; it would be unjust, therefore, immediately to impute to the nation the faults or offenses which its members may commit. In every state, disorderly citizens are unhappily to be found. Let such be held responsible, when they can be rendered amenable for the consequences of their crimes and disorders. If the offended nation have the criminal in its power, it may without difficulty punish him, and oblige him to make satisfaction. When the offending citizen escapes into his own country, his nation should oblige him to repair the damage, if reparation can be made, or should punish him according to the measure of his offense. If the nation refuse to do either, it renders itself in some measure an accomplice in the guilt, and becomes responsible for the injury. To what does this responsibility lead? To reprisal certainly, and if so, probably to war. And should the fortunes or the lives of millions be placed in either of those predicaments by the conduct of one citizen, or of a few citizens? Humanity and reason say no. The constitution of the United States says no. By that constitution, many great powers are vested in the first executive magistrate; others are vested in him, "by and with the advice and consent of the Senate." But neither he, nor he and they in conjunction, can lift up the sword of the United States. Congress alone have power to declare war, and to "grant letters of marque and reprisal." Who indeed should have the power to declare war but these, as the immediate representatives of those who must furnish the blood and treasure upon which war depends? With regard to this very interesting power, the constitution of the United States renews the principles known and practiced in England before the conquest. This indeed may be reckoned one of the chief differences between the government of the Saxons and that of the Normans. In the former, the power of peace and war was invariably possessed by the Wittenagemote, and was regarded as inseparable from the allodial condition of its members. In the latter, it was transferred to the king; and this branch of the feudal system, which was accommodated perhaps to the depredations and internal commotions prevalent in that rude period, has remained in subsequent ages, when from a total change of manners, the circumstances by which it was recommended, have no longer any existence.

There is, by the way, a pleasure in reflecting on such important renovations of the venerable Saxon government; and in discovering

that our national constitution is rendered illustrious by the antiquity, as well as by the excellence of some of its leading principles. The principle now under our view was urged as one reason why this constitution should be adopted by Pennsylvania; if urged with propriety then, it may be urged with propriety now. For what was then adopted, ought now to be supported. This system will not hurry us into war. It is calculated to guard against it. It will not be in the power of a single man or a single body of men to involve us in such distress. For the important power of declaring war is vested in the Legislature at large. This declaration must be made with the concurrence of the House of Representatives.

From this circumstance we may draw a certain conclusion, that nothing but our national interest will draw us into a war. I cannot forbear on this occasion, the pleasure of mentioning to you the sentiments of the great and benevolent man, whose works I have already quoted (Mr. Neckar), who has addressed this country in language important and applicable, in the strictest manner, to its situation, and to the present subject. Speaking of war, and the great caution that all nations ought to use, in order to avoid its calamities: "And you, rising nation," says he, "whom generous efforts have freed from the yoke of Europe! Let the universe be struck with still greater reverence at the sight of the privileges you have acquired, by seeing you continually employed for the public felicity. Do not offer it as a sacrifice at the unsettled shrine of political ideas, and of the deceitful combinations of warlike ambition; avoid, or at least delay, participating in the passions of our hemisphere; make your own advantage of the knowledge which experience alone has given to our old age, and preserve for a long term, the simplicity of childhood; in short, honor human nature by showing, that when left to its own feelings, it is still capable of those virtues that maintain public order, and of that prudence which ensures public tranquility."

On this great subject of peace and war, the voice of all France is responsive to the language of our National Constitution. When the interesting question was before her national assembly, its deliberations, we are told, were watched with anxiety by countless thousands. All Paris was in agitation, and when the decree was pronounced, that the lives and fortunes of twenty-five millions of men should not be at the disposal of a single individual, there was a shout of acclamation raised, which reached from the garden of the Tuileries to the extremest province of France.

Can we believe for a moment that this generous nation would wish to bereave us of a security which they themselves so highly and so justly prize?

July 27.

The Grand Jury returned an indictment against Gideon Henfield. The first count declared that a war was going on by land and sea between the Republic of France on the one hand, and the Kings of Prussia, Sardinia, Hungary, Great

Britain and the States General of the Netherlands on the other; that there was a treaty of amity and commerce between the United States and the Netherlands and that by the Constitution of the United States it is provided that all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land. It charges that by letters of marque a ship called the Citizen Genet was commissioned by the Republic of France to take and destroy ships of the Netherlands and to wage war against them on the high seas; that Henfield, being an inhabitant of the United States, well knowing this and intending to break the treaty of amity aforesaid, became a master on board the said ship, and unlawfully sailed to several places to take the ships, goods and moneys of the Netherlands against the treaty aforesaid and against the Constitution of the United States, its peace and dignity.

There were other counts as to Prussia, Hungary, Sardinia and Great Britain.

The *Prisoner* pleaded *Not Guilty*.

William Rawle,⁷ United States District Attorney, and *Edmund Randolph*,⁸ Attorney General, for the United States.

⁷ RAWLE, WILLIAM. (1759-1836.) Born Philadelphia. Studied law in New York, and afterwards crossed the Atlantic, and entered as a student at the Middle Temple. He became a leader of the Philadelphia Bar, and for more than twenty years his professional business was very great and his income very large. He was one of the Revisers of the Pennsylvania laws, and the author of "Views of the Constitution of the United States," and "The Study of the Law." Says Dr. Wharton (Trials, p. 31 n.): "His mind was eminently clear and discriminating, and his arguments and speeches simple, strong, earnest, and impressive. Of his kind and courteous deportment during a career of prosperity, all who were thrown in contact with him could bear witness, and those who saw the evening of his life darkened, as it had been, by vicissitudes, cares and severe physical pain, still lit up by his calm, patient, and most instructive endurance, can well imagine that the same spirit and the same Christian humility had tempered his more prosperous days. The only administrative public office which Mr. Rawle ever held, was that of Attorney of the United States for the District of Pennsylvania, which he received from the hands of General Washington, by whom he was much respected and esteemed. In this capacity he accom-

Pierre E. Duponceau,⁹ Jared Ingersoll¹⁰ and Jonathan D. Sergeant,¹¹ for the Prisoner.

THE EVIDENCE

Hilary Baker, Lewis Deblois, John Morgan and James Bussett testified for the Government. From their evidence it appeared that Gideon Henfield was a citizen of the United States, resid-

ing in Salem, Massachusetts. Being a sea faring man he had been absent for some time, and about May 1, 1793, being then at Charleston, South Carolina, and desirous of coming to Phil-

panied the President, in the expedition, which, in 1794, proceeded to the western part of this State for the purpose of quelling the insurrection which there broke out, and Mr. Rawle and General Hamilton occupying the same tent, formed part of Washington's family. Afterwards followed the displeasing duty of prosecuting the offenders; and in the performance of this painful task Mr. Rawle's firmness was still mild and forbearing."

⁹ RANDOLPH, EDMUND. Born Virginia. Delegate to Continental Congress, 1779-1783. Member of Convention which framed the United States Constitution, 1788. Governor of Virginia, 1788. Attorney General of the United States, 1789-1793. Secretary of State, 1794. Died 1813.

⁹ DUPONCEAU, PIERRE ETIENNE. (1760-1844.) Born France. Came to America as aid to Baron Steuben. Settled in Philadelphia and became eminent as a lawyer. President of the American Philosophical Society. Author of "Memoir on the Indian Languages of North America."

¹⁰ INGERSOLL, JARED. (1750-1822.) Born New Haven, Conn. Son of an Admiralty Judge of Philadelphia. Studied law at the Inns of Court in London. His Whig principles and American birth rendering dangerous a longer stay in London, he left there after the Declaration of Independence, and spent some time in France, and then returned to Philadelphia to the practice of the law. Was one of the representatives from Pennsylvania in the Continental Congress, and in the convention which formed the Constitution of the United States, where, though a lawyer and a fluent one, he made no speech. Attorney General of Pennsylvania, 1791-1800, 1811-1816. For a short time District Attorney of the United States for Pennsylvania, but resigned, finding the duties of the office to interfere with his practice. Offered, but declined, Federal Circuit Judgeship for New Jersey, Pennsylvania and Delaware, organized in 1801. For the eighteen months preceding his death was President of the District Court of Philadelphia. Federal candidate for Vice-President of the United States, 1812.

¹¹ SERGEANT, JONATHAN DICKINSON. (1746-1793.) Born Newark, N. J. Member Continental Congress, 1776-1777. Attorney General of Pennsylvania, 1777. Died October, 1793, in Philadelphia.

adelphia, he applied to the master of a packet, who asked him more for his passage than he could afford to pay, whereupon he entered on board the *Citizen Genet*, a French privateer, commissioned by the French Republic and commanded by Pierre Johannan. Captain Johannan promised him the berth of prize-master on board the first prize they should capture, and the ship *William*, belonging to British subjects, having been captured about the 5th May, he was put on board her as prize-master, with another person, and arrived in that capacity at Philadelphia. On his examination be-

fore the magistrate, he protested himself an American, that as such he would die, and therefore could not be supposed likely to intend anything to her prejudice. He declared if he had known it to be contrary to the President's proclamation, or even the wishes of the President, for whom he had the greatest respect, he would not have entered on board. About a month afterwards, being before the same magistrate, he declared he had espoused the cause of France, that he now considered himself as a Frenchman, and meant to move his family within their dominions.

Mr. Rawle and Mr. Randolph (to the jury). Every member is accountable to society for those actions which may affect the interest of that society. The United States being in perfect peace with all nations, and allied in friendly bonds with some, their national situation requires a perfect neutrality from every motive applicable to our common interest. An aggression on the subjects of other nations done in an hostile manner and under color of war is a violation of that neutrality. If not under the color of war it would be an act of piracy. But by the laws of nations, if one of the belligerent powers should capture a neutral subject fighting under a commission from the other belligerent powers, he could not punish him as a pirate, but must treat him as an enemy, and it would be a good cause of declaring war against the nation to which he belonged; and if treated as an enemy without just cause it is the duty of the nation to which he belongs to interfere in his behalf; and thus arises another cause of war. Hence the act of the individual is an injury to the nation, and the right of punishment follows the existence of the injury.

The right of peace and war is always vested in the government. It is with us in the United States, but Congress alone possesses it. By the formation of the society every individual

has consented to its being thus exclusively deposited for the general benefit. No individual, therefore, can assume the exercise of this right. For if one could do it, one thousand might, and while the government declared peace the tragedy of war would be acted in its defiance.

If one individual has a right to associate with the subjects of one of the belligerent powers, another individual has an equal right to do the same with the other belligerent power, thus the citizens of the neutral nation might be fighting with each other. Under this unhappy prospect, the national character and existence of America are lost; and instead of being members of a great nation, we become a band of miserable Algerines.

The facts here show: That Henfield is a citizen and inhabitant, though afterwards he takes counsel and alters his note. That he entered on board the privateer, *Citizen Genet*, at Charleston. That she was a commissioned vessel. That he aided and assisted in taking the prize, and came in on board her as prize-master. The sufferings and character of Henfield can have no operation here: it is a point for the Court, and no justification.

France is at war with Austria, Spain, Portugal, and Sardinia, with whom we are at peace; with Great Britain, with whom a treaty of peace exists; and with the United Netherlands and Prussia, with whom there is peace, amity, and commerce. To the first two we are related as having neither given nor received offense. But the want of a treaty with them will not justify the individual in his aggression on them. With Great Britain is a treaty of peace, by Article 7, of which it is provided that there shall be a firm and perpetual peace between his Britannic Majesty and the United States, and the subjects of the one and the citizens of the other. With the United Netherlands and Prussia, treaties not only of peace but of mutual friendship and liberal commerce. The commission under which the proceedings of defendant took place is generally against all these powers, though actual aggression is charged as to one only. That one is one with whom we have

a treaty of peace, which is the supreme law of the land, and this is the positive prohibitory law.

Thus, an infraction of this kind, unless punished, becomes a good cause of war on the part of the offended nation. It is an offense against our own country, at common law, because the right of war is vested in the government only. In a state of nature the right adhered to the individual. It is lost by joining society. The common welfare requires this position in its fullest extent, otherwise a few individuals, for avaricious purposes, might involve the nation in a war; otherwise, the members of the nation, taking opposite sides, might destroy the nation in detail; otherwise, the primary duty due from the citizen to the nation would remain unperformed while his labors and his life were devoted to the service of foreigners. Nor are these only the speculations of the closet. We see them carried into effect in England in affirmation of national common law, i. e., the law of nations.

The English statute is not in force here, because the specific remedy for which alone it was made cannot be had, but the law which it aided, not introduced, is in force. The law of nations is part of the law of the land. This is an offense against the laws of nations. It is punishable by indictment on information as such. It is agreed that the laws of nations point out different methods of proceedings: 1. By the belligerent power treating the offenders as pirates. 2. By negotiation, or the declaration of war. But the answer is that these are concurrent remedies. True, that some writers say they may be treated as pirates, and certain, that they may be treated as enemies. But these do not preclude the national right of proceeding against the delinquents judicially. So a man may defend himself against violence, but the assailant may be indicted. A man may peaceably retake his own property, but he may also have a replevin. A man may enter, etc., but he may have his ejectment. The same observations apply to negotiation. We may negotiate as well on national as on private concerns, but without prejudice to the judicial remedy. But it is the honor of free states that the judicial rem-

edy is necessary. That the Executive should be inadequate to sudden and unusual exertions of power is our pride and happiness; and that our courts should, with that impartial and unbiased dignity which characterizes their judicial investigations of truth, apply the law of nations to men, of which nations are composed, and substitute the scales of justice for the sword of war.

But it is said that there is a want of precedent for this prosecution.

The first answer is, that it is demonstrated that the law of nations is part of the law of the land. The second answer is, that in numerous other instances, enumerated by Blackstone, the law of nations is enforced by the judiciary. In cases of this nature, we find provisions have been made by statute in affirmance of the law, providing more speedy and specific relief than the common course of the law will admit. Thus the 31 Hen. VI. c. 4 was passed, and then, 3 Jas. I., c. 4, which makes it felony to go out of the realm to serve a foreign prince without oath of allegiance. That an indictment will lie on the latter is unquestionable. On the former, see 3 Bulst. 28—a case in point.

It is urged, also, that the right of emigration is natural to freemen. It is no crime to become a French subject, and being a French subject, the defendant may lawfully enlist in this command. The answer is, that when a man has fairly and deliberately emigrated—when he has renounced his own country, and has been received and domicilated by the other—when all this has been done previously to the commission of the hostile act, and without a view to it, there is no offense in an act of this kind. But the power of emigrating, and the power of renouncing the original country, are widely different. To emigrate is declared to be, in most instances, lawful for a private citizen, in some it is dishonorable—as to leave a country under difficulties, as in a dangerous war, etc. But, at all events, if at the time the act was committed, the party was unquestionably a citizen, had not renounced his country, and was not domicilated elsewhere, he cannot escape punishment

by becoming a citizen afterwards. Still less, when as expressly stated and proved, he was then an inhabitant. Is not the defendant's family still at Massachusetts? Is he not still upon the roll of their citizens; were his family in want, would they not be entitled to public relief? Did he not declare that, as an American he would die?

It is said, it is true, that without actual expatriation, a free-man, in a free country, may consistently with the law of nations enter as a volunteer. 2 Lee, 251. The answer is to be found in Vattel l. 3, § 13, in addition to what is already cited. 2. The principles of Lee are as questionable as those of Vattel are solid. It is prostrating the right of civil society, to support the right of man in a state of nature. The latter is destructive to civil society—which is instituted to prevent the pernicious effects of those rights. Grotius, whom he quotes, does not say so. Grotius treats simply of the right of emigrating, and there is not a syllable of the matter treated on by Lee in the whole section of Grotius. Grot. l. 2, c. 5, §24. But in the same section Grotius very justly says, that one ought not to go out of a state, when the interest of the state requires otherwise. And surely the interest of the state is affected by going out for these purposes. Lee himself excepts those states in which it was not allowable by the custom, as he terms it. That this is the case in England is in proof. And it has not been altered here. The bill of rights declares, emigration shall not be prohibited.

It is contended, however, that the act done—having been done on board the vessel—it is there French country, and the act there is lawful. The answer is, that in no respect is a foreign vessel a foreign country. Suppose the defendant had on board that vessel committed a private offense, the indictment lays it as having been done by a citizen—an inhabitant. There is really no technical difficulty.

The evidence comes fully up to the case. The defendant was in Charleston; he there entered the vessel, and to argue that the instrument by which the offense is committed shall protect him from punishment, is an absurdity. By this the

old doctrine of deodands is reversed: there the instrument partook of the offense: here the offender is to be incorporated into the innocence of the instrument.

Let us suppose America engaged in war, and that one of her faithless children prefers the other party, joins an hostile detachment which has already invaded his own country, or enters on board a foreign privateer lying in our bay, and commits those acts, which in war are lawful, in peace, crimes. Does the right to emigrate, the right to choose his country, to renounce his former allegiance protect him here?

It will be said that this is not a parallel case. What is the difference? 1. The offender in the latter case has a right to leave one country and become a citizen of another. 2. He has a right to disengage himself entirely from the obligations of duty and obedience to the first country. 3. The act of joining the other country, of itself, exempts him from those primary obligations. So far, the parallel is exact. To escape its effect, it may be asserted, that a man can never lift his hand against his native country. But, then, what becomes of all these rights? If the slavish doctrine of an unalienable allegiance is admitted, it totally destroys the right of emigration. Thus after all this circuit we are let down where we began, viz.: That the emigration from one country and the reception in another must be substantially and definitively effected before the acts of hostility.

Let it not be said that this doctrine violates the rights of man. It is on the rights of man that it is established. The rights of man are the rights of all men in relation to each other, and when voluntarily assumed in society founded on principles of *genuine freedom*, they form a useful, benevolent and endearing system, in which as much is received as is given. Perfect equality is one of those rights. We render ourselves equal when we all submit to the laws. That equality is destroyed if one man can set himself above them. That equality is destroyed if one man with impunity may involve three millions in war.

With the honor of being the first in the eighteenth century

to unfurl the standard of freedom we unite the glory of being the first in the records of man who deliberately composed a constitution of government, combining every noble, every useful, every rational, every patriotic object, and containing within itself the means of acquiring and securing them all. Of this the prominent effects strike the most careless eye.

The world does not exhibit a fairer picture of felicity, more useful industry, more wholesome laws, more public and private virtue, more genuine and uniform improvement, more to attract the admiration of the traveller and secure the affections of the citizen than the land we inhabit. Yet it is on such a country that inconsiderate and selfish men would pour the miseries of war.

Is it not fair to ask them by what authority have you or I delegated to an individual the right of subjecting us to the pressure of heavy taxes, to the desolation of property, to the destruction of agriculture and of commerce, to the dangers of military service, in short, to the havoc and miseries of war? Has Pennsylvania, have the United States? No. Our excellent constitution has wisely vested this solemn, awful step in the collected wisdom and patriotism of the whole country. There the necessity of the war and the means of defense will be compared by men selected by their country and responsible to it, but not by men who involve us in what they profess they will not share with us, and in the very act which draws on us the greatest political affliction renounce the very connection which has alone rendered us liable for their conduct. Have the Convention of France requested it? No. They have requested our neutrality.

The French people who assisted us formerly did it under the sanction and approbation of their sovereign. Instead, however, of his having no power over them, as stated by the other side, the operation of most positive and powerful laws was suspended, with a view to that public assistance which afterwards took place. The intention of France was soon known; she declared herself when she thought the time mature.

Mr. Duponccau, Mr. Ingersoll and Mr. Sergeant addressed the jury; and argued: 1. That the indictment did not include an offense at common law. 2. That if the President's proclamation created such an offense, the case before the Court was committed before the proclamation was made. 3. That though the treaty with Morocco prohibited the enlisting of American citizens under such circumstances as the present, yet there was no such provision in the treaty with France, and hence the inference from its express introduction into the former treaty is that it was intentionally omitted from the latter. 4. That independently of these grounds, as there was no statute giving jurisdiction, the Court could take no cognizance of the offense.

MR. JUSTICE WILSON. This is, gentlemen of the jury, a case of the first importance. Upon your verdict the interests of four millions of your fellow-citizens may be said to depend. But whatever be the consequence, it is your duty, it is our duty, to do only what is right.

It has not been contended, on the present occasion, that the defendant has any peculiar exclusive right to take a part in the present war between the European powers, in relation to all of whom the United States are in a state of peace and tranquility. If he has no peculiar or exclusive right, it naturally follows, that what he may do every other citizen of the United States may also do. If one citizen of the United States may take part in the present war, ten thousand may. If they may take part on one side, they may take part on the other; and thus thousands of our fellow-citizens may associate themselves with different belligerent powers, destroying not only those with whom we have no hostility, but destroying each other. In such a case, can we expect peace among their friends who stay behind? And will not a civil war, with all its lamentable train of evil, be the natural effect? Yet what is right must be done, independent of the consequences, which I have only stated, in order to lay before you the necessity of seriously considering the case entrusted to you before you decide upon it.

Two principal questions of fact have arisen, and require your determination. The first is, that the defendant, Gideon Henfield, has committed an act of hostility against the subjects of a power with whom the United States are at peace: this has been clearly established by the testimony. The second object of inquiry is, whether Gideon Henfield was at that time a citizen of the United States. This he explicitly acknowledged to Mr. Baker; and, if he declared true, it was at that time the least of his thoughts to expatriate himself.

The questions of law coming into joint consideration with the facts, it is the duty of the Court to explain the law to the jury, and give it to them in direction.

It is the joint and unanimous opinion of the Court, that the United States, being in a state of neutrality relative to the present war, the acts of hostility committed by Gideon Henfield are an offense against this country, and punishable by its laws.

It has been asked by his counsel, in their address to you, against what law has he offended? The answer is, against many and binding laws. As a citizen of the United States, he was bound to act no part which could injure the nation; he was bound to keep the peace in regard to all nations with whom we are at peace. This is the law of nations; not an *ex post facto* law, but a law that was in existence long before Gideon Henfield existed. There are, also, positive laws, existing previous to the offense committed, and expressly declared to be part of the supreme law of the land. The Constitution of the United States has declared that all treaties made, or to be made, under the authority of the United States, shall be part of the supreme law of the land. I will state to you, gentlemen, so much of the several treaties in force between America and any of the powers at war with France, as applies to the present case. The first article of the treaty with the United Netherlands, declares that there shall be a firm, inviolable, and universal peace and sincere friendship between the States General of the United Netherlands and the United

States of America, and between the subjects and inhabitants of the said parties.

The seventh article of the definitive treaty of peace between the United States and Great Britain, declares that there shall be a firm and perpetual peace between His Britannic Majesty and the United States, and between the subjects of the one and the citizens of the other. And the first article of the treaty with Prussia declares that there shall be a firm, inviolable, and universal peace and sincere friendship between His Majesty the King of Prussia and his subjects, on the one part, and the United States of America and their citizens on the other.

It may be observed, that the treaty would not be less sufficient in relation to the present question, if "subjects" and "citizens" had not been mentioned. These treaties were in the most public, the most notorious existence, before the act for which the prisoner is indicted was committed. The notoriety may, indeed, be said to have been greater than that of the general Acts of Congress; since, besides the same mode of publication, they are expressly referred to in the constitution.

Much has been said on this occasion, by the defendant's counsel, in support of the natural right of emigration; but little of it is truly applicable to the present question. Emigration is, undoubtedly, one of the natural rights of man. Yet it does not follow from thence that every act inconsistent with the duty is inconsistent with the state of a citizen. Nothing is more inconsistent with the duty of a citizen than treason; but it is because he still continues a citizen that he is liable to punishment.

The JUDGE concluded by remarking, that the jury, in a general verdict, must decide both law and fact, but that this did not authorize them to decide it as they pleased; they were as much bound to decide by law as the judges; the responsibility was equal upon both.

The *Jury* retired about 9, and came into court again about half-past 11, when they informed the Court they had not agreed. They were desired to retire again, which they did.

July 28.

The *Jury* returned into court this (Monday) morning, having delivered into the hands of the JUDGE a privy verdict on Sunday morning, soon after the adjournment of the Court. The verdict was *Not Guilty* and the *Prisoner* was discharged.

THE TRIAL OF JOHN ETIENNE GUINET FOR FITTING OUT AND ARMING A WARSHIP FOR A BELLIGERENT, PHILADELPHIA, 1795.

THE NARRATIVE.

The verdict in favor of Henfield was celebrated with such extravagant marks of joy and exultation as to show that punishment would not be inflicted on those who should openly violate the rules prescribed for the preservation of neutrality by an executive proclamation; and it exposed the government to the obloquy of having attempted a measure which the laws would not justify. The verdict was considered by Washington of such moment, as to lead him to use it as a principal reason for calling an extra session of Congress.

The next year a statute was passed by Congress especially forbidding certain acts in breach of neutrality, and a Grand Jury indicted one John E. Guinet, a resident of Philadelphia, for being concerned in the fitting out and arming in the river Delaware a vessel which was to be employed in making war against England and her allies. This time the government was successful, for the jury at once convicted the prisoner.

Between the day of the acquittal of Henfield and the day Guinet was convicted a great change had come over the people of the United States. Citizen Genet had gone too far. He had threatened to appeal from the President to the people. He had written a dictatorial letter to Washington and had received a cold reply from Jefferson, the Secretary of State. The Cabinet had decided to demand his recall and "the popularity of the French minister soon took a sudden turn and collapsed like a punctured balloon. The national pride had been touched and the public esteem for the hero of Trenton, of Valley Forge and of Yorktown again approached the zenith."¹

¹ 2 Elson Hist. U. S. 189.

THE TRIAL.²

In the United States Circuit Court, District of Pennsylvania, Philadelphia, May, 1795.

HON. WILLIAM PATERSON,³ *Judge.*

May 11.

The Grand Jury for the District returned an indictment⁴ against John Etienne Guinet and John Baptist Le Mirè, of Philadelphia. They were charged with being concerned, in the port of that city on December 1, 1794, in the fit-

² *Bibliography.* *Wharton Trials, see *ante*, p. 616; 2 Dall. 321.

³ PATERSON, WILLIAM. (1745-1806.) Born at sea, of Irish parents. Graduated Princeton, 1763. Studied law with Richard Stockton. Admitted to bar, 1769. Member New Jersey Constitutional Convention. Attorney General, 1776. Member of Congress, 1780. Member Federal Constitutional Convention, 1787. United States Senator, 1789. Governor of New Jersey, 1791. Associate Justice United States Supreme Court, 1793. Revised the Laws of New Jersey. LL. D. Harvard and Dartmouth.

⁴ The United States statute, on which the indictment was founded, declared as follows: Sec. 3. That if any person shall, within any of the ports, harbors, bays, rivers, or other waters of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every such person, so offending, shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned, at the discretion of the Court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars, and the term of imprisonment shall not exceed three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunitions, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of any person who shall give information of the offense, and the other half to the use of the United States.

Sec. 4. That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increas-

ting out and arming a vessel called *Les Jumeaux* with intent that it should be employed in the service of the French Republic to cruise and commit hostilities upon the subjects and property of the King of Great Britain and other foreign states with whom (as well as with the French Republic) the United States was at peace.

Guinet, being the only one apprehended, pleaded *Not Guilty*.

William Rawle,⁵ for the United States.

Mr. Levy,⁶ for the Prisoner.

THE EVIDENCE

The following witnesses were examined: *David Lenor*, *James Milnor*, *Benjamin Philips*, *William Naglee*, and *Hon. Richard Peters*. Their testimony established the following facts:

Les Jumeaux entered at the port of Philadelphia in the month of ———, laden with sugar and coffee, from Port-au-Prince; and on her arrival she mounted four guns and two swivels. The vessel had originally been a British cutter, employed in the trade to the coast of Guinea; and had ten port-holes on each side, though only four were actually open, at the time of her arrival, to accommodate the four guns,

then mounted. Soon after, a Frenchman applied to a ship carpenter to repair the vessel, which was in a very rotten state; and, after some difficulty, a bargain for that purpose was struck; but the carpenter declared he would only open the number of ports (twenty) which were pierced when she came into port; and in all other respects fit her for a merchant ship. At the time of repairing her, she was owned in shares by *Le Maitre*, the original owner, and seven other Frenchmen. The twenty ports being opened, and the other repairs of the vessel proceeding rapidly, the Govern-

ing or augmenting the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, cruiser or armed vessel in the service of a foreign prince or state, or belonging to the subjects or citizens of such prince or state, the same being at war with another foreign prince or state with whom the United States are at peace shall be punished."

⁵ See *ante*, p. 624.

⁶ LEVY, MOSES. (1757-1826.) Born Philadelphia. Graduated University of Pennsylvania, 1772. Earliest Jewish practitioner of law in Philadelphia. Admitted to bar 1778. Recorder of Philadelphia, 1802-1822. Presiding Judge District Court, 1822-1825. Member Pennsylvania Legislature. Trustee Pennsylvania University, 1802-1826. Reached great eminence in the legal profession.

ment instituted an inquiry into the subject, in order to ascertain the nature and design of her equipments. On examination, the Master Warden found the vessel in great forwardness, her twenty ports open, her upper deck changed, etc., and four iron guns on carriages, with two swivels, were lying on the adjoining wharf. He, therefore, desired the carpenter to desist from working any further on the vessel, and made a report on the subject, to the Secretary at War; who directed that all the recent equipments of a warlike nature should be dismantled, and the vessel restored to the state in which she was when she arrived. The Master Warden, accordingly, caused the portholes to be shut up, and even refused to allow any ring-bolts to be fixed in the vessel. A few days before she left the port a witness said he saw four guns in her hatchway; the carpenter who repaired her said she carried with her from the wharf, the four guns and two swivels that she had brought in; and, according to the custom house entry, she sailed from the city in ballast, having nothing in her hold but provisions, water-casks, and wood for the ship's use. It had been said, at one time, that she was to carry flour; at another time that she was to carry passengers; and Guinet had told the ship carpenter that she would be advertised on freight. She sailed in the middle of the day, and some of the workmen went down in her as far as League Island.

It appeared, likewise, that she came to at Wilmington; that an apprentice to the pilot on board of her was left behind, in order to carry on some guns, cordage,

and bedding; that, accordingly, he, in company with his master (who had returned from Wilmington after piloting the vessel thither), two or three Frenchmen that belonged to the vessel, and two black boys, carried and delivered on board three or four carriage guns; that the witness (who did not go on board) saw no appearance of other guns, which he could have done, though it was dark, had there been portholes and the guns run out; that the pilotboat returned to Philadelphia the same night, for the purpose of carrying to the ship some of her crew, and two or three hogsheads; that the hogsheads were put on board the pilot-boat the next day, and being there opened, were found to be filled with a number of little kegs, the contents of which were unknown; that, at the same time, twenty or thirty muskets, a number of lanterns, cans, etc., were put on board; that the whole of this transaction took place in the night time, between 10 and 11 o'clock; and that, during the same night, the pilot-boat, with three or four Frenchmen on board, pushed from the wharf, and sailed down to Wilmington, where the vessel still lay; that the things brought in the pilot-boat being put on board the ship, she got under weigh and proceeded to Reedy Island; that there were then between 30 and 40 persons on board; that the witness could not perceive that she had any guns or gun-carriages on deck, though this might be owing to its being dark; that the vessel dropped down to New-castle; and the pilot-boat was again sent to Philadelphia, by order of an officer (as it would seem) belonging to the vessel,

who met the witness there, and between 9 and 10 o'clock at night put one or two trunks and a large box on board the pilot-boat at South Street wharf; that there were then lying on the wharf six guns without carriages, which Guinet told the witness he must take on board the pilot-boat, at 12 o'clock at night; that the masts were so weak, that the witness was at first afraid to undertake it; that he went, however, to borrow a runner and tackle from an adjoining sloop; that Guinet concluded to postpone heaving the guns into the boat till the next evening; and, in the intermediate time the Marshal seized the guns and boat, and apprehended the parties.

While the vessel was repairing, Guinet was seen frequently attending the people at work; and the Master Warden, before whom he had attended with the owner, understood that he acted in the character of an interpreter, as the owner could not speak English. The ship carpenter did not see Guinet until the bargain was struck, and the repairs were considerably advanced; that afterwards, when the owner came, which was generally twice a day, he spoke so little English that Guinet used to translate for him, and on all occasions act as his interpreter; that Guinet sometimes brought orders from the owner to the carpenter; that he never assumed any right of ownership himself, but, on the contrary, once complained to the carpenter, that the owner had not given him so much as a hat for interpreting. In opposition, however, to the idea of his being merely an interpreter, it was proved, that

when the Marshal seized the pilot-boat, Guinet claimed one of the trunks on board, and declared that the guns lying on the wharf belonged to him, he having, as he alleged, purchased them to sell again as merchandise. A runner and tackle was sent on board while the pilot-boat was in the Marshal's custody, but it has never been claimed. Guinet denied before the judge, on his examination, that he knew anything more of the pilot-boat than that she was going to Newcastle, and he had put his baggage on board to send thither; but the pilot's apprentice being confronted with him, insisted that he was the person who had ordered the six cannon to be taken on board, and that he was acquainted with the transaction. When, likewise, Guinet was apprehended, two papers were found in his possession: one of them was an account, stated in his own handwriting, between Le Maître and himself, in which were charges for supplying muskets, ball, and cannon; for moneys advanced at sundry times on account of the equipments; and for commissions and attendance in superintending the repairs and outfit of the vessel. The other paper was a letter from Messrs. Mendenhall & Co., of Wilmington, to Guinet, dated the 20th of December, 1794, containing the following passage: "Your favor per post is come to hand. We think it not possible to get any 4-lb. shot, or any other size, here. We think it probable that we can let one of our boats go down with the things for the ship; they have taken the water-casks on board already. The account shall be

ready against you call." The Deputy Collector proved the manifest of the sloop Farmer, which brought up six guns, consigned from Mendenhall & Co.

to Guinet; and Guinet acknowledged before the Judge, that the guns lying at South Street wharf were those that had been so consigned to him.

Mr. Levy (to the jury). This is the first prosecution that has occurred since an Act of Congress was passed on the subject. Before the act was passed, an important and interesting controversy had arisen between the Executive of the Federal Government and the French minister; in the course of which the latter contended, that, if not by the general law of nations, at least by positive compact, the French Republic was entitled to repair and equip vessels of war in the ports of the United States; since the treaty, by making it expressly unlawful for the others, had, by necessary implication, made it lawful for her. As a branch of this controversy, it had, likewise, been insisted, that an American citizen had a right to enter into the service of the French Republic; and the position certainly received some countenance from the refusal of a Grand Jury in Boston to find bills of indictment against persons who had acted in that manner, and from the acquittal of Gideon Henfield by a Philadelphia jury. These interpretations and proceedings were, however, disapproved by our Executive; who, on the first point, contrary to the avowed sense of the great mass of the people, construed the twenty-second article of the treaty to be merely an exclusion of other belligerent nations from the privilege of equipping in our ports, and not a permission to France; and this diversity of sentiment between the government and the citizens, finally produced the Act of Congress now in question.

The section on which this prosecution is founded is, indeed a severe and penal one; but, in proportion to the rigor of the punishment, will a conscientious jury require the degree of proof to be. It contemplates four descriptions of offense: First. To fit out and arm, or attempt to fit out and arm; Second. To procure to be fitted out and armed; Third. To be concerned, knowingly, in furnishing, fitting out, or arming any ship or vessel, with intent that such ship or vessel shall

be employed in the service of any foreign prince or state, to cruise or commit hostilities upon a nation at peace with the United States; and, Fourth. To issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel, to the intent that she may be so employed. Two facts, then are essential to justify a conviction: The vessel must have been fitted out and armed within the port of Philadelphia; and the defendant must, at least, have been knowingly concerned in her equipment.

With respect to the first fact, there is no direct proof that the vessel sailed with more guns than she brought with her; and the mere intention to arm and equip her is not criminal. Nor, even if cannon, arms and ammunition had been put on board, does it follow as a necessary consequence, that it was intended to arm her as a vessel of war in the service of France, to cruise against the friends of America. There is no evidence of such cruising, nor of the design (whether as passengers or mariners) with which the thirty or forty persons were on board the vessel; and military stores may lawfully be sold here, or be exported to foreign countries by American citizens: the act is only punishable when the armament and stores are applied to the use of the vessel in which they are shipped. But the most that can possibly be inferred from the evidence, is an augmentation of the force of the vessel, as she arrived here with guns actually mounted; and then the indictment should have been founded on the fourth instead of the third section of the act. There is a great difference in the language and penalties of the two sections, which undoubtedly arose from the very different nature of the cases to which they respectively apply. For, it is neither so offensive in itself, nor so dangerous to the peace of the nation, that a vessel already armed should add something to its force, as that a vessel should originally be constructed and equipped within our ports, for the purposes of war. Hence, therefore, the bare attempt in the latter case is made criminal; but, in the former, the unlawful act must be consummated.

The words of the fourth section refer to ships of war, cruisi-

ers, or other armed vessels. All the writers on the subject state, that there are four kinds of armed vessels—three with commissions and one without commission, to-wit: vessels of war, privateers, letters of marque, and all other armed vessels; and this vessel must be included in the last description, not being embraced by the others.

With respect to the second essential fact, there is not sufficient evidence to show that the defendant was knowingly concerned in the illegal outfit of the vessel. He acted only as an interpreter; which, notwithstanding the generality of the word concerned, cannot fairly be included in the definition of an offense that calls for proof of a serious intention to furnish and outfit the vessel. There was no crime in being owner of guns at South Street Wharf; and the object in ordering them to be put on board the pilot boat does not appear. The transaction with Mendenhall & Co. rather proves that the guns were not intended for this vessel as it would have been easier, more expeditious, and safer, in that case, to send them on board from Wilmington, with the water-casks and other articles, which were actually sent by them. The account found in the defendant's possession, relates to the disbursements of a factor for his principal. It is not shown how it arose, whether before or after the articles were received; and after a vessel illegally equipped has sailed, it cannot be an offense within the act to pay drafts in discharge of the tradesmen's bills. Presumptions unfavorable to innocence ought not to be encouraged in a case so highly penal.

Mr. Rawle entered into a description of the principles and advantages of an honorable neutrality; and relied upon the good sense and patriotism of the jury, to prevent their being seduced by a retrospective view of the popular prejudices that had formerly prevailed. He then contended, first, that the offense had been committed; second, that the defendant was knowingly concerned in committing it; and third, that the indictment was founded on the proper section of the act of Congress.

There is evidence that the vessel sailed from the wharf with

the guns that she brought into port ; that four other guns with military stores were afterwards put on board of her, and that she had a crew of thirty or forty persons. It is arming a vessel, when arms are put on board, she being on her passage ; and it cannot be material, that those arms should be arranged in a particular manner. As to the design of the equipment, there is no proof of an actual cruise ; but the jury will decide whether it was any other than that charged in the indictment. There is no attempt to prove that she had a cargo, or carried passengers ; on the contrary, it is in evidence that she sailed in ballast ; and the subdivisions of interest in the vessel are in the nature of all ownership of privateers.

The defendant was knowingly concerned, as furnishing arms, knowing them to be designed for an unlawful purpose, constitutes the crime ; and as an interpreter was the necessary instrument on the occasion ; even if the defendant had appeared in no other character, this would have been sufficient to convict him. But he was not merely an interpreter ;—he appears to have interfered on various other occasions ; and his account is conclusive evidence of a confidential and important agency in accomplishing the illegal outfit of the vessel. It might afford some color of defense to say, that he only attempted to send the cannon on board from South Street Wharf, if this account did not demonstrate that he was concerned in the equipment from the beginning. There is nothing to justify an idea, that it arose from paying drafts, after the vessel had sailed ; but on the contrary several items are for money advanced ; and the charge for commissions, etc., has relation to the very moment of commencing the repairs. The agency proved by the account is corroborated by the purchase of cannon from Mendenhall & Co., which is evidently connected with the general plan for equipping this vessel.

The indictment is well laid ; the second section is the only one to which the case is applicable. The fourth section refers only to the augmentation of the force of the vessel, which on her arrival in our ports, was, in fact, a vessel of war, either public or private. If, therefore, a man-of-war or privateer

adds to the number or size of her guns, or makes any equipment solely applicable to war, it is an offense against this section. But if a vessel, having guns on board, and yet being neither a man-of-war nor a privateer, enters our ports, she cannot legally be equipped for the purposes of war. Without this construction, the Act of Congress would be nugatory; as it might be evaded by bringing a single gun in the vessel. In the present case, it appears that *Les Jumeaux* had been employed in the Guinea trade; that she arrived here with a cargo of sugar and cotton; and being converted from a merchant vessel, carrying a few guns for self-defense, into a privateer armed for hostilities, it is clearly an original outfit within the meaning of the law. The distinction is justified by this further consideration, that the third section makes arming the vessel, with intent to employ her in hostilities, the offense; whereas the fourth section refers nothing to the intent with which the force of the vessel is augmented, as it only contemplates the case of vessels originally fitted for war by the nation to which they belong.

MR. JUSTICE PATTERSON. Gentlemen of the Jury: This is an indictment against John Etienne Guinet, for being, knowingly, concerned in furnishing, fitting out, and arming *Les Jumeaux*, in the port and river Delaware, with intent that she should be employed in the services of the French Republic, to cruise, or commit hostilities, upon the subjects of Great Britain, with whom the United States are at peace: And it is the province of the jury to inquire, whether the proof exhibited on the trial, has fully maintained the charge contained in the indictment.

Much has been said upon the construction of the third and fourth sections of the Act of Congress; but the Court is clearly of opinion, that the third section was meant to include all cases of vessels, armed within our ports by one of the belligerent powers, to act as cruisers against other belligerent powers in peace with the United States. Converting a ship from her original destination, with intent to commit hostilities; or in other words, converting a merchant ship into a vessel of

war, must be deemed an original outfit; for the act would, otherwise, become nugatory and inoperative. It is the conversion from the peaceable use, to the warlike purpose, that constitutes the offense.

The vessel in question arrived in this port, with a cargo of coffee and sugar, from the West Indies; and so appears to have been employed by her owner with a view to merchandise, and not with a view to war. The inquiry, therefore, is limited to this consideration, whether, after her arrival, she was fitted out, in order to cruise against any foreign nation, being at peace with the United States. It is true, she left the wharf with only four guns, the number that she had brought into the port; but it is equally true, that when she had dropped to some distance below, she took on board three or four guns more, a number of muskets, water casks, etc.; and, it is manifest, that other guns were ready to be sent to her by the pilot boat. These circumstances clearly prove a conversion from the original commercial design of the vessel, to a design of cruising against the enemies of France; and, of course, against a nation at peace with the United States, since the United States are at peace with all the world. Nor can it be reasonably contended, that the articles thus put on board the vessel were articles of merchandise, for, if that had been the case, they would have been mentioned in her manifest, on clearing out of the port, whereas it is expressly stated, that she sailed in ballast. If they were not to be used for merchandise, the inference is inevitable, that they were to be used for war. No man would proclaim on the house top, that he intended to fit out a privateer: the intention must be collected from all the circumstances of the transaction, which the jury will investigate, and on which they must decide. But if they are of opinion, that it was intended to convert this vessel from a merchant ship into a cruiser, every man who was knowingly concerned in doing so, is guilty in the contemplation of the law.

It will only then be necessary to ascertain how far the defendant was knowingly concerned: for, though he were con-

cerned, if he did not act with a knowledge of the real object, he would be innocent. It has been alleged in his defense that he was merely an interpreter; and if in fact he had appeared in that character alone, we should not have thought it a sufficient ground for conviction. But the jury will collect from the other parts of the transaction whether this is not used as a mask to cover his efficient agency in the equipment of the vessel. He carried orders from the owner to the ship carpenter, he told the pilot boy at what time the guns should be taken on board his boat to be carried to the ship; the account found in his possession states charges for supplies of cannon, ball, muskets and commissions for services; and the whole is conducted in a secret and mysterious manner under the shade of night. Would he have acted this part as a mere interpreter? If it had been fair mercantile business, involving nothing repugnant to our laws, would it have been so much a work of darkness? This alone casts a gloom over the transaction that will impress every just and ingenuous mind with an idea of fraud and delinquency.

If the defendant has been concerned in the offense, there is no doubt that it is effected as far as it was in his power to complete it. The illegal outfit of the vessel was accomplished; and that an additional number of cannon was not sent to augment her force, was not owing to his respect to the laws, but to the vigilance of the public police.

Upon the whole the jury will consider the indictment; and give such a verdict as shall comport with evidence and law.

The *Jury* returned a verdict of *Guilty*.

THE TRIAL OF JAMES WILLIAMSON FOR ASSAULT AND BATTERY, NEW YORK CITY. 1819.

THE NARRATIVE.

Several New York gentlemen were waiting for some of the female members of their families on the sidewalk in front of the residence of one of them one spring evening when a city watchman introduced himself in their midst. One of the party made a remark about it which angered the watchman who swore at him; told him that he would show him what a watchman was and dragged him to the police station, where, after an explanation to the captain, he was released. Indicted for assault and battery, the watchman was convicted by a jury and fined, the judge having told them that the case was "an illustration of the effect which the possession of a little power and brief authority will have on some individuals."

THE TRIAL.¹

*In the Court of General Sessions, New York City. April,
1819.*

HON. CADWALLADER, D. COLDEN,² *Mayor.*

April 6.

During the present term an indictment had been returned by the Grand Jury against James Williamson for an assault and battery committed upon Samuel W. Coats on March 3rd, 1818. The jury having been selected the trial came on today.

*Mr. Griffin,*³ *for the People.*

*N. B. Graham,*⁴ *for the Prisoner.*

¹ *Bibliography.* *New York City Hall Recorder. See 1 Am. St. Tr. 60.

² See 1 Am. St. Tr. 4.

³ See page 651.

⁴ See page 651.

THE EVIDENCE

Samuel W. Coats testified that on the afternoon of March 3rd last, his mother-in-law, wife and two sisters went to make a call on Hudson street, in this city. In the evening, the witness, his father-in-law, Robert Waite, and his son Robert, Junior, went from the Waite residence in Maiden Lane to escort the ladies home. They met the ladies returning, on Broadway, opposite his residence, near the corner of Anthony street. The party stood on the sidewalk quietly conversing together when Williamson, a watchman on his beat, intruded himself into their circle. Mr. Waite, Sr., said to him that this was very improper and he went away, but returned again in a short time, whereupon witness said to him that such conduct was impertinent, when prisoner immediately seized him violently by his shoulder, and said, "Damn you, I'll show you what a watchman is;" and threatened to drag him to the watchhouse. He made use of much insulting language

to witness, and of indecent language, concerning the ladies, to the mob which his clamor had collected before the door of his residence. He requested prisoner to disperse the mob, but to this he paid no attention.

Mr. Waite and his wife shortly afterwards went home, and witness went into his house, where he stayed about fifteen minutes, and then came out again, on the steps, at the front of his house, where he was immediately seized by prisoner and dragged violently to the watchhouse, being abused and insulted by him the whole way. After they arrived at the watchhouse, the captain of the watch recommended a settlement to the parties concerned; considering it to be watch-house law, that the watchman arresting a citizen, was the sole judge as to his demerits, and had a right to detain him all night. However, witness, after some difficulty, was liberated, and returned to his house.

The *Prisoner* called no witnesses.

The *Jury* returned a verdict of *Guilty*.

CADWALLADER, MAYOR. There was no assignable motive that he could see for the act of the prisoner, and no justification for his conduct. This is an illustration of the effect which the possession of a little power and brief authority will produce in the minds of some individuals. It is the duty of the citizen to submit to a watchman, but if he unduly and unwarrantably exercises that power with which he is intrusted, to the injury and oppression of the citizen, he must be responsible for the consequences.

This was a case of that description. The court was dis-

posed to inflict such a punishment as the defendant would feel; and no other consideration had influenced him not to impose a heavier fine, except his inability to pay the amount.

The Prisoner must be fined \$50 and pay all the costs.⁵

⁵ GRAHAM, NATHAN B. Member New York City bar, 1819-1832. Married Jane Lorimer. Died June 18, 1832, aged 66.

GRIFFIN, GEORGE. (1778-1860.) Born East Haddam, Conn. Graduated Yale, 1797. Studied law at Litchfield. Admitted to bar 1799. Practiced law in Wilkesbarre, Pa., until 1806, and then in New York City for fifty-two years. LL. D. Columbia, 1837. Late in life he became interested in theological and literary studies and was the author of *The Sufferings of Christ*, 1845, and *The Gospel Its Own Advocate*, 1850.

THE TRIALS OF MAJOR STEDE BONNET AND THIRTY-THREE OTHERS FOR PIRACY. CHARLESTON, SOUTH CAROLINA, 1718.

THE NARRATIVE.

Down to less than a century ago, the most feared and the most reckless criminal was the pirate—the rover and robber upon the high seas. He was an outlaw and an enemy of the human race with whom neither faith nor oath was to be kept. In the common law of England, said Coke, they are termed “brutes” and “beasts of prey:” and it is lawful for any one that takes them, if they cannot with safety to themselves bring them under some government to be tried, to put them to death. In Norman times piracy was holden to be petit treason for which the offenders were to be hanged, drawn and quartered: but since the reign of Edward I, offenders received judgment as felons of the highest order and were promptly hanged.

The first and oldest trial in America for piracy was that of Major Bonnet and his crew of thirty-three men, who, at Charleston, South Carolina, at the beginning of the eighteenth century, were tried in batches of four or more. The proceedings are fully reported and give a vivid picture of a court of justice in the Colonies two hundred years ago. A prisoner was not allowed counsel in those days and a large part of the examination of witnesses was conducted by the judge.

Bonnet and his crew were charged with capturing two different merchant vessels and taking from them cotton, molasses, sugar and money. The captain or “major” as he was called, had succeeded in getting away for a time, and so the sailors were tried first. A few of them pleaded guilty. Two or three showed that they had been compelled to serve against their will and were acquitted, but the rest were convicted and sentenced to death after a long sermon by the judge, filled with biblical quotations. Seventy-two hours afterwards, no

less than twenty-two of them were hanged from the same scaffold at White Point, near the town of Charleston. Only two days later Major Bonnet, who had been recaptured, was tried and convicted and hanged within a month at the same place.

THE TRIAL OF TUCKER, ROBINSON, PATERSON,
SCOT AND BAYLEY, FOR PIRACY, CHARLES-
TON, SOUTH CAROLINA, OCTOBER, 1718.

THE TRIAL.¹

*In the Court of Vice-Admiralty, Charleston, South Carolina,
October, 1718.*

HON NICHOLAS TROTT,² Judge.³

October 28.

The Commission to Nicholas Trott, Judge of the Court of Vice-Admiralty, and the Commission in the name of the lord

¹ *Bibliography.* *Howell's State Trials.

² TROTT, NICHOLAS. (1663-1760.) Born in England and came to America at the end of the seventeenth century. In 1700 he was Speaker of the House; in 1703, one of the Counselors for the Proprietors. From 1712 to 1719, he was Chief Justice. "He was superseded by Richard Allen, who was followed by many others up to 1774, but until that time, when William Henry Drayton was appointed, we know little beyond the names of the successive Chief Justices and their assistants. Chief Justice Trott was, however, a lawyer to be remembered. His charge in 1718, and his collection of the statute law entitles his name to notice. The Chief Justice was, however, like Lord Bacon, capable of being seduced by patronage and money; he was charged, it would seem upon good grounds, with base and iniquitous practices, such as continuing cases from term to term, and for years, for the sake of fees, giving advice and acting as counselor in cases depending in his own court; but the Proprietors refused to remove him. This led to the revolution of 1719, in which Trott's power was broken down and that of the Proprietors forever annihilated, but even after that, unaided by power, his great abilities gave him great weight. He died in 1760, and his name is extinct in Carolina. He is only known by the unfortunate combinations of legal learning, talents and corruptions." O'Neal, Bench and Bar of South Carolina.

³ The following sat as Assistant Judges: George Logan, Esq., Alexander Parris, Esq., Philip Dawes, Esq., Geo. Chicken, Esq., Benjamin de la Conseillere, Esq., Samuel Dean, Esq., Edward Brailsford, Gent., John Croft, Gent., Capt. Arthur Loan, Capt. John Watkinson.

Palatine, and the rest of the lords proprietors and testified by the Hon. Robert Johnson, governor, and the rest of the lords deputies, for holding the Court of Admiralty Sessions, was read.

Then the Grand Jury was called, and twenty-three of them were sworn; the names of which are as follows: Michael Brewton, foreman; Robert Tradd, Andrew Allen, Peter Manigault, John Beauchamp, John Bullock, Thomas Barton, Anthony Matthews, Alexander Kinlock, Henry Perrineau, Paul Douxsaint, John Breton, John Bee, Daniel Gale, Thomas Loyde, Laurence Dennis, Elias Foisin, John Shepherd, John Simmons, George Peterson, Solomon Legare, Abraham Lesuir, and John Caywood.

The JUDGE of the Vice-Admiralty proceeded to give his charge to the Grand Jury,⁴ which on the next afternoon and also the following day, returned a number of indictments against the pirates.

October 30

The Clerk. Set Robert Tucker, Edward Robinson, Neal Paterson, William Scot and Job Bayley to the bar.

Then the petit jury were called over.

The Clerk. You the prisoners at the bar: these good men that were called last, and have here appeared, are those that shall pass between our sovereign lord the king and you, upon your lives and your deaths; therefore, if you or any of you will challenge them or any of them as they come to the book to be sworn, and before they be sworn, you may, and you shall be heard.

The petit jury were sworn, as follows: Timothy Bellamy, foreman; George Duckett, John Rivers, William Sheriffe, Benjamin Dennis, Hugh Durfey, Thomas Chambers, Daniel Townshend, John Lee, Thomas Bee, John Barton, Richard Fairchild.

The Cryer. O Yes, if any man can inform the Judge of this Vice Admiralty for the Vice Admiralty jurisdiction of

⁴ This is given in full in the report in Howell.

this province, and the rest of the Commissioners of this Admiralty Sessions, or the Attorney General of this inquest to be taken between our sovereign lord the king, and the prisoners at the bar, or any of them, of any treason, piracy, murder, or other felony committed or done by the prisoners at the bar, or any of them, let them come forth, and they shall be heard; the prisoners now stand at the bar upon their deliverance.

The *Prisoners* were severally bid to hold up their hands (which they did).

The Clerk. You gentlemen of the jury that are sworn, look upon the prisoners, and hearken to their charge.

Then the indictment was read charging the prisoners with having taken on the high seas a sloop called the *Francis*, Peter Manwareing, captain, and carrying away from it a quantity of goods and chattels including money.^{4a}

^{4a} "The jurors for our sovereign lord the king do upon their oath present, that Stede Bonnet, alias Edwards, alias Thomas, late of mariner; Edward Robinson, late of Newcastle upon Tyne, mariner; Barbadoes, mariner; Robert Tucker, late of the island of Jamaica, mariner; Edward Robinson, late of Newcastle upon the Tyne, mariner; Neal Paterson, late of Aberdeen, mariner; Job Bayley, alias Beely, late of London, mariner; William Scot, late of Aberdeen, mariner; the 2d day of August, in the 5th year of the reign of our sovereign lord George, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, etc., by force, etc., upon the high sea, in a certain place called Cape James, alias Cape Inlopen, about 2 miles distant from the shore, in the latitude of 39°, or thereabouts, and within the jurisdiction of the Court of Vice Admiralty of South Carolina, did piratically and feloniously set upon, break, board, and enter a certain merchant-sloop, called the *Francis*, Peter Manwareing commander, then being a sloop of certain persons (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault, in and upon the said Peter Manwareing, and other his mariners (whose names to the jurors aforesaid are unknown), in the same sloop, against the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid Peter Manwareing, and others his mariners of the same sloop, in the sloop aforesaid then being, in corporal fear of their lives, then and there in the sloop aforesaid, upon the high sea, in the place aforesaid, called Cape James, alias Cape Inlopen, about 2 miles distant from the shore, in the latitude of 39° or thereabouts, as aforesaid; and within the jurisdiction aforesaid, piratically and feloniously did steal, take and carry away the said merchant-sloop,

The Clerk. Upon this indictment they have been arraigned: Upon their arraignment they have pleaded not guilty; and for their trial have put themselves upon God and their country, which country you are. Your charge is to inquire whether they or any of them, are guilty of the felony and piracy of which they stand indicted, in manner and form as they stand indicted, or not guilty. If you find them, or any of them, guilty, you shall then inquire what goods or chattels, lands or tenements, they, or any of them, had at the time of the felony or piracy committed, or at any time since. But if you find them not guilty, etc. And hear your evidence.

Richard Allen,⁵ Attorney General, (to the jury: May it please your honors, and you gentlemen of the jury; the nature of the crime, piracy, for which the prisoners at the bar are now to be tried, and the statute of the 28th of Henry the 8th, entitled, "For Pirates," has been fully and learnedly laid open and explained by the judge in his charge to the

called the *Francis*, and also 26 hogsheads, 3 tierces, and 3 barrels of rum, of the value of 263l. 6s. 8d., current money of the island of Barbadoes; 25 hogsheads of molasses, of the value of 138l. 13s. 8d., current money of the island of Antegoa; 3 barrels and 3 tierces of sugar, of the value of 33l., like current money of Antegoa; 2 pockets of cotton, of the value of 50s., like current money of Antegoa; and about 60 weight of indigo, of the value of 9l., like current money of Antegoa aforesaid; 1 new cable, of the value of 50l., sterling money of Great Britain; 19 French or Spanish pistoles; 2 half moidores of gold; 14 French crowns; 1 pair of silver buckles, value 10s., sterling money of Great Britain; and 1 silver watch, of the value of 7l., sterling money of Great Britain aforesaid; the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there, upon the high sea aforesaid, in the aforesaid place, called Cape James, alias Cape Iulopen, about 2 miles distant from the shore, in the latitude of 39° or thereabouts, as aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid sloop, in the custody and possession of the said Peter Manwareing, and others his mariners of the said sloop, and from their custody and possession then and there, upon the high sea aforesaid, in the place aforesaid, called Cape James, alias Cape Iulopen, as aforesaid, and within the jurisdiction aforesaid, against the peace of our now sovereign lord the king, his crown and dignity."

⁵ ALLEN, RICHARD. Succeeded Nicholas Trott as Chief Justice in 1719, see *ante*.

Grand Jury (at which I am sensible most, if not all of you, were present). Therefore I shall say but little more on that head; and only remark, that it is a crime so odious and horrid in all its circumstances, that those who have treated on that subject have been at a loss for words and terms to stamp a sufficient ignominy upon it: some calling them sea wolves; others beasts of prey, and enemies of mankind, with whom neither faith nor treaty is to be kept. And all this is but a faint description of these miscreants: For beasts of prey, though fierce and cruel in their natures, yet, as has been observed of them, they only do it to satisfy their hunger, and are never found to prey upon creatures of the same species with themselves. Add hereto, that those wild beasts have neither rational souls, understanding, nor reason to guide their actions, or to distinguish between good or evil. But pirates prey upon all mankind, their own species and fellow creatures, without distinction of nations or religions; English, French, Spaniards and Portuguese, and Moors and Turks are all alike to them. For pirates are not content with taking from the merchants what things they stand in need of, but throw their goods overboard, burn their ships, and sometimes bereave them of their lives for pastime and diversion, as we have had frequent instances of late, and prove destructive to all trade and commerce in general. And if a stop be not put to those depredations, and our trade no better protected, not only Carolina, but all the English plantations in America will be totally ruined in a very short time.

The pirates are become very numerous and formidable in these parts: The trade of America is no small advantage to the crown of Great Britain. Jamaica, by relation, is ruined by those pirates already; and other parts of America have suffered most grievously, and are like to share in the same fate. I know not what is done at home, therefore I cannot say no care at all has been taken of us: But this I do say, no effectual care has been taken to suppress those pirates. And if a true representation of these matters were laid before his majesty, we could not but hope for some redress.

It is not my business to call in question the conduct of the Spaniards, in breaking up the Bay of Campeachy. They could not but think the turning away such a number of profligate wretches, as were got together, must put them on a worse course of life. They have done them more harm since than cutting their logwood: for nine parts in ten of them turned pirates, and have lived upon robbing and plundering them and us ever since that time. That, and the great expectations which so many had, from the Bahama wrecks, where not one in ten proved successful, gave birth and increase to all the pirates in those parts, English, French and Spaniards.

I just now instanced Jamaica as a place that is almost ruined by the pirates: But what occasion have we to look abroad? What a grievous dilemma were we ourselves reduced to in the month of May last? When Thatch, the pirate, came and lay off this harbor with a ship of 40 guns mounted, and 140 men, and as well fitted with warlike stores of all sorts as any fifth rate ship in the navy, with three or four pirate sloops under his command. And after having taken Mr. Samuel Wragg, one of the council of this province, bound out from this place to London, as also one Mr. Marks, and several other vessels going out and coming into this harbor, they plundered those vessels going home to England from hence of about 1,500*l.* sterling, in gold and pieces of eight. And after that, they had the most unheard of impudence to send up one Richards, and two or three more of the pirates with the said Mr. Marks, with a message to the government, to demand a chest of medicines of the value of three or 400*l.* and to send them back with the medicines, without offering any violence to them, or otherwise they would send in the heads of Mr. Wragg and all those prisoners they had on board; and Richards, and two or three more of the pirates, walked upon the bay, and in our public streets, to and fro in the face of all the people, waiting for the governor's answer. And the government, for the preservation of the lives of the gentlemen they had taken, were forced to yield to their demands. And some of those very prisoners now at the bar were part of that Thatch's and

Bonnet's crew. Afterwards one Vaughan, another noted pirate, came and lay off our bar, and sent in another insolent message. This roused our spirits; and though reduced to a very low ebb by reason of the calamities of the Indian war, and long and heavy taxes, we could not bear those insults, but sent out a force to suppress them. However, we must own, that that honorable gentleman, Colonel William Rhett, was the chief, if not the first promoter of fitting out two sloops to take some of those pirates. The government readily fell in with the measures proposed: Colonel Rhett went in person, accompanied by many gentlemen of the town, animated with the same principle of zeal and honor for our public safety, and the preservation of our trade.

It is probable Vaughan the pirate, before things could be got in readiness, might have some intimation of our design, and made his way off the coasts, though all possible care was taken to prevent it. However Colonel William Rhett and the rest of the gentlemen were resolved not to return without doing some service to their country, and therefore went in quest of a pirate they had heard lay at Cape Fear. About the latter end of September they came up with and engaged them. The fight lasted above six hours, and the pirates were forced to surrender, though the colonel's vessel running aground, lay under all the disadvantages in the world, as you are all sensible.

The piratical crew at the bar, and now to be tried, in the engagement, killed 10 or 11 of our men on the spot, and wounded about 18, several of which died since they came on shore here.

This pirate sloop was commanded by that noted pirate, Major Stede Bonnet, and formerly called the *Revenge*, now the *Royal James*, and was one of those very sloops that lay off the harbor of Charlestown about May last, when they took Mr. Wragg prisoner, and sent up their insolent demands to the Governor, as I have mentioned before.

We must all own, that the undertaking and design of fitting out those sloops after these pirates, was bold and noble, and

carried on with prudence and courage, and crowned with victory and success; and I hope Colonel Rhett and the rest of the gentlemen that were with him, will meet with both thanks and rewards suitable to their great merit, and the credit and reputation they have brought to this province by this gallant action.

But see how justice follows those wicked offenders! They are now brought to suffer in that country which they so lately insulted. It is true, Bonnet had not the sole command of his sloop when he lay off the bar, but was turned out some time before by Thatch, but that was not Bonnet's fault.

Bonnet's escape out of prison is no small misfortune to us: First, because some will be reproached with conniving at his escape that had no hand in it, and though they be never so innocent: Secondly, by reason of the ill consequence that may happen to many merchants in case Bonnet makes a head again, and particularly to the merchants of this province.

I hope the great reward of 700*l.* offered by the government for taking Bonnet and his master, will make the people vigilant in apprehending them. I am sure the government gave frequent and strict charges to the marshal for securing him; and ordering sentinels to be placed early in the evening; and immediately on his escape, set up all night, sending hue and cries and expresses by land and by water throughout the whole province; so that it is to be hoped he will be retaken before this service be over. I am sensible Bonnet has had some assistance in making his escape; and if we can discover the offenders, we shall not fail to bring them to exemplary punishment.

And now, gentlemen of the jury, I must remind you of your duty on this occasion. You are bound by your oaths, and are obliged to act according to the dictates of your consciences, to go according to the evidence that shall be produced against the prisoners, without favor or affection, pity or partiality to any one of them, if they appear to be guilty of those crimes they are charged with. And you are not allowed a latitude of giving in your verdict according to will and humor.

I am sorry to hear some expressions drop from private persons (I hope there is none of them upon the jury) in favor of the pirates, and particularly of Bonnet; that he is a gentleman, a man of honor, a man of fortune, and one that has had a liberal education. Alas, gentlemen, all these qualifications are but several aggravations of his crimes. How can a man be said to be a man of honor, that has lost all sense of honor and humanity, that is become an enemy of mankind, and given himself up to plunder and destroy his fellow creatures; a common robber and a pirate?

Nay, he was the Archipirata, as it is now taken in the worst sense, or the chief pirate, and one of the first of those that began to commit those depredations upon the seas since the last peace.

I have an account in my hand of above twenty-eight vessels taken by him in company with Thatch, in the West Indies, since the 5th day of April last; and how many before, nobody can tell.

His estate is still a greater aggravation of his offense, because he was under no temptation of taking up that wicked course of life.

His learning and education is still a far greater; because that generally softens men's manners, and keeps them from becoming savage and brutish; but when these qualifications are perverted to wicked purposes, and contrary to those ends for which God bestows them upon mankind, they become the worst of men, as we see the present instance, and more dangerous to the commonwealth.

Gentlemen, most of the said Bonnet's crew, and particularly the prisoners at the bar, to-wit, Edward Robinson, Robert Tucker, William Scot, Job Bayley and Neal Paterson, are old offenders, and were with Thatch and Bonnet at the taking of all, or most of these vessels I have mentioned, and were either with Bonnet or Thatch when they lay off our bar in May last, and sent up that insulting message, and were in the engagement against Colonel Rhett, so that there is hardly any room left for the least pity or compassion: Who can think of it,

when you see your fellow townsmen, some dead, and others daily bleeding and dying before your eyes?

But the particular fact or act of piracy for which the prisoners at the bar are now to be tried, is set forth in the indictment; for that they the said Edward Robinson, Robert Tucker, William Scot, Job Bayley, and Neal Paterson, the 2nd day of August, in the fifth year of his majesty's reign, by force and arms, upon the high sea, in a certain place called Cape James *alias* Cape Inlopen in the latitude of 39° did piratically and feloniously set upon, board, break and enter a certain merchant sloop called the Francis, Peter Manwareing commander, putting the said Manwareing and others in corporal fear of their lives; and then and there piratically and feloniously did take and carry from the said Manwareing out of the said sloop, twenty-six hogshead and three tierces, and three barrels of rum, the value of 263l. 6s. 8d. and other the goods mentioned in the indictment, of the value of 500l.

We shall call the evidence, and prove the fact fully and clearly upon them.

Take notice, gentlemen, that the boarding, breaking, and entry of one, if the rest were present and consenting, is the boarding, breaking, and entry of all the rest.

We shall prove, that all the prisoners at the bar were at the taking of Manwareing's sloop, that they all bore arms, and that they all shared a few days before they came to Cape Fear: and if so, we doubt not but you will find them guilty, and discharge that duty the country expects from you.

*Mr. Thomas Hepworth.*⁶ May it please your honors, and you gentlemen of the jury, the crime the prisoners now stand charged with, is piracy, which is the worst sort of robbery,

⁶ HEPWORTH, THOMAS. "Was Recorder of the City of Charleston in 1723, as appears by an old record of the minutes of that Corporation, and was Chief Justice of the Province, as is evident by a writ which I have with his signature. 'T. Hepworth, C. J.,' dated 11th of May, 1726. In looking over the council records from 1717, which are the earliest records in the office, I find Thomas Hepworth's name mentioned as Chief Justice, but it is not in the published list." O'Neal, Bench and Bar of South Carolina, p. 8.

both in its nature and its effects, since it disturbs the commerce and friendship betwixt different nations, and if left unpunished, involves them in war and blood. What calamities and ruin they carry along with them, no person can be a stranger to; so that those that bring not such criminals to judgment, when it lies in their power, and is their duty to do so, are answerable in a great measure before God and man, for all the fatal consequences of such acquittals, which bring a scandal on the public justice, and are often attended with public calamities.

It is not therefore, gentlemen, to be supposed that wise or honest men (and there is none who would willingly be thought otherwise), who love their country, and wish its peace and prosperity, would be guilty in that kind.

What has been said by the king's attorney or myself upon this unexpected occasion, I hope will not be looked upon as intended to influence any of the jury. I am sure it is far from being so designed; religion, conscience, honor, common honesty, humanity, and all laws forbid such methods. There is no doubt but the judges as well as the jurymen, best discharge their duty when they proceed without favor or affection, hatred or ill-will, or any partial respect whatsoever: Malice and favor (two great enemies to justice) are to be excluded all courts of judicature as too partial.

Every man ought to be extremely tender of such a person as he has reason to believe is innocent; but it should be considered likewise, on the other side, that he who brings a notorious pirate or common malefactor to justice, contributes to the safety and preservation of the lives of many, both bad and good; of the good, by means of the assurance of protection; and of the bad too, by the terror of justice. It was upon this consideration that the Roman emperors, in their edicts, made this piece of service for the public good as meritorious as any act of piety or religious worship.

Our own laws demonstrate how much our legislators, and particularly how highly that great prince king Henry V, and his parliament, thought England concerned in providing for

the security of traders, and scouring the seas of rovers and free booters. Certainly there never was any age wherein our ancestors were not extraordinary zealous in that affair; looking upon it as it is and ever will be the chief support of navigation, trade, wealth, strength, reputation and glory of the English nation.

Gentlemen, our concern, as our trade is, ought in reason to be rather greater than that of our fore-fathers: We want no manner of inducements, no motives to stir us up, whether we consider our interest or honor. We have not only the sacred word, but also the glorious acts of the best of kings, which sufficiently manifest to us, that the good and safety of the English nation is the greatest care of his life. Let every man therefore who pretends to anything of a true English spirit, readily and cheerfully follow so good, so great, so excellent an example, by assisting and contributing to the utmost of his power and capacity at all times towards the carrying on his noble and generous designs for the common good; and particularly at this time, by doing all he can, to the end that by the administration of equal justice, the discipline of the seas, on which the good and safety of the English nation, and these parts of America more especially, entirely depends, may be supported and maintained.

The civil law terms the pirates beasts of prey, with whom no communication ought to be kept; neither are oaths or promises made to them binding. And by the law-marine the captors may execute such beasts of prey immediately without any solemnity of condemnation, they not deserving any benefit of the law.

I believe, gentlemen, that no greater motives can be urged to spur you on in your duty, than to desire you to reflect and consider how long our coasts have been infested with pirates (for the name of men they do not deserve), and how many vessels they have taken and pillaged belonging to this place, as well as multitudes of others belonging to divers parts of his majesty's dominions; and how many poor men in whose blood they have imbrued their hands with the greatest inhu-

manity imaginable, and how many poor widows and orphans they have made, and how many families they have ruined, and how long they have gone on in their abominable wickedness: Nay, do but consider how those very priates lately insulted this government, when they sent for medicines, threatening to destroy our vessels and men in case of refusal; nay, since these have accepted of certificates from the government of North Carolina, like dogs to their vomits they have returned to their old detestable way of living, and since taken off these coasts thirteen vessels belonging to British subjects.

I believe you cannot forget how long this town has labored under the fatigue of watching them, and what disturbances were lately made with a design to release them, and what arts and practices have been lately made use of and effected for the escape of Bonnet, their ringleader; the consideration of which shows how necessary it is that the law be speedily executed on them to the terror of others, and for the security of our own lives, which we were apparently in danger of losing in the late disturbance, when under a notion of the honor of Carolina, they threatened to set the town on fire about our ears.

We shall now call our witnesses, who will relate to you what enormous and horrid crimes the prisoners at the bar have committed in the prosecution of the fact laid in the Indictment.

THE EVIDENCE.

The *Clerk*. Call Ignatius Pell, the boatswain.

Mr. Hepworth. Do you know the prisoners at the bar? *Pell*. I know them all very well.

Mr. Hepworth. Please to give the Court an account what vessels were taken after you came from North Carolina. *Pell*. I shall begin before that time. We came from the bay of Honduras, and from thence to Providence, after which we took several vessels, and then we came and lay

off this bar, where we took five vessels.

Judge Trott. Did all the prisoners come from the bay of Honduras? *Pell*. All except Robert Tucker; he came out of a sloop belonging to Bermuda; after that we took a brigantine, out of which we took 14 negroes. After we had discharged the brigantine, we set sail and went to Topsail inlet at North Carolina, where the ship was run ashore and lost, which Thatch caused

to be done. After we had been there some time, captain Thatch came aboard, and demanded all our arms, and took our best hands and all our provision, and all that he had, and left us.

The *Attorney General*. Were all these men sent aboard of Major Bonnet immediately, or no? *Pell*. No, sir; they were put ashore upon an island.

JUDGE TROTT. How came they on board the *Revenge*? *Pell*. The boat was sent off to fetch them aboard.

A *Prisoner*. Major Bonnet came with the boat, and told us, as we were on a maroon island, that he was going to St. Thomas' to get a commission from the Emperor to go against the Spaniards a-privateering, and we might go with him or continue there: so we having nothing left, was willing to go with him.

The *Attorney General*. You say all were on shore, and all might have gone up into the country; pray what constraints were any of you under? *Pell*. Sir, none; when we left Topsail inlet, it was with a design to go to St. Thomas' for the Emperor's commission to go against the Spaniards; but the first vessel we saw we gave chase to, and came up with her.

Mr. Hepworth. What did you take out of that vessel? *Pell*. We took some provisions out of her. After we had discharged her, we saw another, which we chased and took.

The *Attorney General*. Were all these men aboard and in arms at the same time? *Pell*. Yes, sir; all were in arms: so, after we had taken some provisions out of her, then we discharged her. Next day we saw two sloops bound to Bermuda,

which we took. The next day we gave chase to another, and about seven or eight o'clock we came up with them.

JUDGE TROTT. I suppose you were always ready for an engagement; so that they had their arms always in order? *Pell*. I know nothing to the contrary.

JUDGE TROTT. Was Tucker there in particular? *Pell*. He was, to be sure.

JUDGE TROTT. Go on. *Pell*. Then we gave chase to a ship and we came up with her, in which were some negroes. We left three negroes on board, and two white men, and sent three hands from the *Revenge*: but we seeing two sloops more, we stood after them, and the other turned tail, and we never saw them more: so we came up with the sloop, out of which we took 30 barrels of beef, some butter, and other provision.

Mr. Hepworth. What did you return in the room of these goods? *Pell*. Some molasses that we had on board Major Bonnet's sloop, after we had discharged these sloops. Next day we took a ship and a schooner, which Major Bonnet took with him.

Mr. Hepworth. Did you take no plunder out of those? *Pell*. The chief was provisions. Then we sailed in company; and the next day we came to the capes of Virginia, where we met with two vessels bound for Glasgow in Scotland, out of which we took provisions and some tobacco. And after we had discharged them we sailed for Cape James; and after we had been at anchor some time, we saw a sloop, which was Captain Manwareing: we let down our dory, and sent some hands on board;

and in a little time after they came on board the *Revenge* with Captain Manwareing.

The *Attorney General*. Were all the prisoners on board Manwareing's sloop; or had they all their arms ready when Manwareing was taken? *Pell*. I cannot say that they were all on board; but they had all their arms ready.

JUDGE TROTT. Did they all appear forward and active? Did none of them show themselves dissatisfied or unwilling to act at that time? *Pell*. No, I don't know but one was as forward and as willing to act as the other; all of them had their arms ready.

JUDGE TROTT. Well, how did you proceed after Captain Manwareing was taken? *Pell*. Next day we haled the schooner alongside of Captain Manwareing's sloop, and hoisted out several hogsheads of molasses, and put on board the schooner.

Mr. *Hepworth*. What became of the schooner afterwards? *Pell*. After we put Reeves' wife on board, and Captain Read's son, we sent them on shore.

The *Attorney General*. How long was Captain Manwareing a prisoner? *Pell*. About ten weeks.

The *Attorney General*. Was not there more goods taken out of Manwareing's sloop? What became of them? Did you not share them? *Pell*. Yes, we shared a little before we came to Cape Fear.

The *Attorney General*. Did all the prisoners at the bar receive their shares? *Pell*. Yes, sir; I know nothing to the contrary.

JUDGE TROTT. They did not

refuse their shares, none of them, did they? *Pell*. No.

The *Clerk*. Have any of you any questions to ask the king's evidence? Robert Tucker, have you any? *Prisoner*. No, sir.

The *Clerk*. Edward Robinson, have you? No, sir.

Mr. *Hepworth*. May it please your honors, we will proceed to call another evidence.

The *Clerk*. Call Captain Thomas Read.

Mr. *Hepworth*. Captain Read, please to look upon the prisoners at the bar, if you know them. *Read*. I know them all very well.

Mr. *Hepworth*. Please to give an account to the Court how you was taken, and also of the taking of Captain Manwareing. *Read*. The sloop *Revenge* was at an anchor, and the schooner lay alongside of her. I was then a prisoner on board the sloop *Revenge*. In the evening we saw a sloop coming into the bay, and Major Bonnet sent off five hands with the dory; and about an hour after they came on board the *Revenge*, and brought Captain Manwareing. After they brought him on board, Major Bonnet demanded his papers, and he gave them to him. He asked him from whence he came? He answered, from Antegoa, and bound for Boston. He asked him what he had on board. He told him; but it being night, he said but little more to him; next morning they brought the sloop and haled alongside the schooner. And I saw them hoist out several hogsheads out of the sloop and put on board the schooner. And I heard Major Bonnet say the next day, that there were twenty-one hogsheads; and that he had

ordered pitch and tar to be put on board the sloop, and in the evening they took the foresail and mainsail of the schooner and sailed for Cape Fear.

JUDGE TROTT. You look upon all those men as belonging to Major Bonnet, and they were all active in the taking of Manwareing? *Read.* I did not see but one acted as the other did.

JUDGE TROTT. You did not look upon them to be prisoners, like you and your men? *Read.* No, sir.

JUDGE TROTT. Do you know any thing of their sharing? Did they all take their shares? *Read.* I know nothing of that, for we were all in the round-house, and were not admitted among them at that time.

Mr Dean. Did you see them have their shares each of them? *Read.* I will not say I saw them have every man his particular share; but they were all together when they did share.

The Clerk. Would any of you ask the king's evidence any question?

Prisoners. We desire nothing but that he would speak the truth.

Mr. Hepworth. May it please your honors, we shall proceed to call another evidence, which is Captain Peter Manwareing.

The Clerk. Call Captain Peter Manwareing.

Mr. Hepworth. Captain Manwareing, do you know the prisoners at the bar? *Manwareing.* I know them very well.

Mr. Hepworth. Please to give the Court an account of your being taken by them. *Manwareing.* When they came on board us we were at an anchor. About 8 or 9 o'clock in the evening we

saw the canoe coming: I ordered my man to hale them. He asked from whence they came, and what sloops they were? They answered Captain Thomas Richards from St. Thomas', and Captain Read from Philadelphia. So we were glad to hear of it; so hoped all was well. But as soon as they came up the shrouds, they clapped all hands to their cutlasses. Then I saw we were taken: and I said, Gentlemen, I hope, as you are Englishmen, you will be merciful, for you see we have nothing to defend ourselves. They told us they would if we were civil. So I was ordered on board the Revenge with two of their men. So when I came on board, Major Bonnet desired me to come under the awning. He demanded my papers. I gave them to him. So he told me I must lie as well as I could. Next day morning Robert Tucker came to me, and asked me what I had on board, and told me, if I did not tell the truth it should be the worse for me. I told him I had some molasses, sugar, and rum. Then he asked me concerning my passengers, what money they had? I told him I never examined passengers what money they had. So then Major Bonnet ordered them to come and lie alongside the schooner; but what was done till then on board my sloop I cannot tell. But then they took out the molasses and the rum, and put on board the schooner.

The Attorney General. How did they behave themselves with respect to yourself afterwards? *Manwareing.* They were civil to me, very civil; but they were all very brisk and merry, and had all things plentiful, and were a-making punch and drinking.

The *Clerk*. Would any of you the prisoners ask the king's evidence any question? No.

Mr. Hepworth. Please your honors, we will proceed to call another evidence.

The *Clerk*. Call James Killing, Captain Manwareing's mate.

Mr. Hepworth. Do you know the prisoners at the bar? *Killing*. Yes, sir; I know them all very well.

Mr. Hepworth. Please to give the Court an account of the taking Captain Manwareing's sloop, *Killing*. The 31st of July, between 9 and 10 of the clock, there running a strong tide at ebb, we came to an anchor about fourteen fathom of water near Cape James. In about half an hour's time I perceived something like a canoe: So they came nearer. I said, here is a canoe a-coming; I wish they be friends. I hailed them and asked from whence they came? They said, Captain Thomas Richards from St. Thomas', and Captain Thomas Read from Pennsylvania. They asked me from whence we came? I told them from Antegoa. They said we were welcome. I said they were welcome, as far as I knew. So I ordered the men to hand down a rope to them. So soon as they came on board they clapped their hands to their cutlasses; and I said we are taken. So they cursed and swore for a light. I ordered our people to get a light as soon as possible. So they ordered our captain immediately to go on board the *Revenge*; and accordingly was sent with two of their own hands; and I saw him no more that night. So when they came into the cabin, the first thing they begun with was the pine apples, which they

cut down with their cutlasses. They asked me if I would not come and eat along with them. I told them I had but little stomach to eat. They asked me why I looked so melancholy. I told them I looked as well as I could. They asked me what liquor I had on board. I told them some rum and sugar. So they made bowls of punch, and went to drinking of the Pretender's health, and hoped to see him king of the English nation: then sung a song or two. Next morning they ordered more hands on board the sloop, and so came and lay along-side the schooner; after that they hoisted out several hogshheads of molasses, and several hogshheads of rum and put on board the schooner, and took several barrels of pitch and tar and put on board the sloop; and I happened to go down into the cabin, and Robert Tucker came to me and told me I had no business there, but was better go forward and work among the rest of the men. So I went forward and asked who that was. They told me that was their father. In the after part of the day two of Bonnet's men were ordered to the mast to be whipt, and I was threatened if I did not confess all I knew. Then Robert Tucker came to me and told me I must go along with them; I told him I was not fit for their turn, neither were my inclinations that way. After that Major Bonnet himself came to me and told me I must either go on a maroon shore or go along with them, for he designed to take the sloop along with him. That evening between 8 and 9 we were ordered to set sail, but whither I knew not. So we sailed out that night, and I be-

ing weary with the fatigue, went to sleep; and whether it was with a design or not I cannot tell, but we fell to leeward of the Revenge; and in the morning Major Bonnet took the speaking trumpet, and told us if we did not keep closer, he would fire in upon us, and sink us. So then we proceeded on our voyage till we came to Cape Fear.

JUDGE TROTT. Have you done with your evidence? *Killing.* Yes.

The *Clerk.* Would any of you prisoners ask the king's evidence any questions? No.

JUDGE TROTT. You the prisoners at the bar stand charged with felony and piracy committed on a certain sloop belonging to Captain Peter Manwareing. The evidences have proved it home upon you; the boatswain tells what old offenders you were, and that you were with Thatch off this bar, and that you were at the taking several vessels after you left Topsail inlet; and all the evidences prove the same; so that it appears all of you took up with this wicked course of life out of choice. Now what evidences have you to come in on your behalf, or what have you to say in your defense? Now is your time to speak what you have to say.

The *Clerk.* Robert Tucker, what have you to say? *Tucker.* After Captain Thatch had taken what we had and left us, Major Bonnet came and told us that he was going to St. Thomas' for the emperor's commission, if there was any to be had.

JUDGE TROTT. Pray, if you were bound to St. Thomas', what did you do at the Cape of Virginia? What business had you

there? *Tucker.* We had but little provision on board.

JUDGE TROTT. So you went and met with some by the way.

The *Clerk.* Edward Robinson, what have you to say? *Robinson.* When Captain Thatch left us it was on a maroon island, and Major Bonnet came and told me he was going to St. Thomas', and we might go with him.

JUDGE TROTT. Was not you one of them that was off this bar with Thatch? *Robinson.* Yes.

JUDGE TROTT. Why did you not come on shore then? *Robinson.* I would have come on shore, but Captain Thatch would not give me leave. I was with Mr. Wragg, and told him I would go on shore if I had liberty.

JUDGE TROTT. Was you one of the five that came up to town? *Robinson.* No.

The *Clerk.* Neal Paterson, what have you to say in defense of yourself? *Paterson.* Thatch came on board and carried away fourteen of our best hands, and marooned twenty-five of us on an island; and Major Bonnet came and told us he was minded to go to St. Thomas', and if there were any commissions from the emperor, to get one, and go a-privateering against the Spaniards; so I was willing to go with him, and when I was on board, he forced me to do what he pleased, for it was against my will.

JUDGE TROTT. Did not Thatch carry away your money and what you had besides of goods? *Paterson.* Yes.

The *Attorney General.* Was you not all ashore when you received the act of grace. *Paterson.* Yes, sir.

The *Attorney General.* Why had you not continued ashore?

Why did you join with Bonnet? Or who forced you to it? *Puterson.* But, sir, it was in a strange land, and I had no money, nor nothing left, and I was willing to do something to live; but it was against my will to go a pirating.

JUDGE TROTT. If you were forced and took only provisions, pray how did you come to share so much money and goods afterwards? You say Thatch carried away what you had before. *Puterson.* I could not hinder the rest from doing what they pleased; but it was contrary to my inclination.

The *Clerk.* William Scot, what have you to say? *Scot.* When we left Topsail inlet, it was to go to St. Thomas'; and I asked whether there was provisions on board. They told me there was enough, which was not above ten or eleven barrels.

JUDGE TROTT. So you took it where you could find it, because you had it not of your own; but pray what did you with so much molasses, which was neither fit to eat or drink? *Scot.* What I

did, was to keep me from perishing; but it was not in my power to hinder the rest.

The *Clerk.* Job Bayley, what have you to say? *Bayley.* When Captain Thomas or Major Bonnet was ready to sail I went aboard and I asked whether they had provisions on board? They told me they had; but in a few days it was all spent, and then I was forced to do as the rest did.

JUDGE TROTT. But why did you not do as Captain Manwareing and his men did? You see they did not act as you did. *Bayley.* Captain Manwareing was not taken then.

JUDGE TROTT. But how came you to join with them afterwards; and pray what made you fight against Col. Rhett when he came out with lawful authority to you? *Bayley.* We thought it had been a pirate.

JUDGE TROTT. And so one pirate might fight with another. But how could you think it was a pirate, when he had King George's colors?

The *Attorney General.* May it please your Honors, and you, gentlemen of the jury, the evidences have plainly proved that all the prisoners at the bar were at the taking of Captain Manwareing's sloop, that they all consented to, and all were active in it, and all received their shares; so that I think it hath been plainly proved home upon them.

JUDGE TROTT. Gentlemen of the jury, the prisoners at the bar all stand indicted for felony and piracy committed on a sloop belonging to Captain Peter Manwareing, as it is expressed in the indictment. The boatswain tells us what old offenders they were before they went to Topsail Inlet; that they were at the taking of no less than thirteen vessels; and that in particular they were at the taking of Captain Man-

wareing. Then comes Captain Read, and he was taken before Captain Manwareing, and was then a prisoner on board the pirate sloop, and he tells you, they all appeared in arms, and that he did not look upon them as prisoners, or under constraint, but of the same company; and he tells you he saw them take Captain Manwareing, and that he saw them take out the goods, as is mentioned in the indictment, out of Manwareing's sloop. Then comes Captain Manwareing himself, and he says all the goods mentioned in the indictment were taken out, and that they shared these goods among themselves. Then comes Killing, the mate, and he proves the same, and particularly Tucker, he was so forward, that he told them, if they did not tell the truth, it should be the worse for them. And Paterson was so active, that he was for having them brought to the gun to make them confess; and that all the rest had their arms ready, and all had their shares. So that I think the evidences have fully proved the indictment upon them, and that it is very plain and home against them. They plead indeed, that they were forced and constrained to go, but give no proof of it; and therefore what constraint any of of them appears to be under, I shall leave to your considerations. Though I think the evidence is very plain and clear, yet I shall not pretend to direct your judgments. I shall only remark to you what the wise man saith, that "he that justifieth the wicked, as well as he that condemneth the just, even both are an abomination to the Lord."

And about two hours after the *Jury* returned, and gave in their verdict.

The *Clerk*. Gentlemen, answer to your names. Timothy Bellamy.

Timothy Bellamy. Here, etc.

The *Clerk*. Are you all agreed of your verdict?

The *Jury*. Yes.

The *Clerk*. Who shall say for you?

The *Jury*. The foreman.

The *Clerk*. Robert Tucker, hold up thy hand. How say

you? Is he Guilty of the piracy whereof he stands indicted, or Not Guilty?

The *Foreman*. *Guilty*.

The *Clerk*. What goods, and chattels, etc.?

The *Foreman*. None that we know of.

The *Clerk*. Then hearken to your verdict, as the Court hath recorded it. You say that Robert Tucker is Guilty of the piracy whereof he stands indicted, and that he had no goods or chattels, etc.?

The *Jury*. Yes.

And the *Jury* also found Edward Robinson, Neal Paterson, William Scot, and Job Bayley *Guilty*.

The *Clerk*. Marshal, look to your prisoners.

THE TRIAL OF SMITH, CARMAN, THOMAS, MORRISON, LIVERS, BOOTH, HEWET, AND LEVIT, FOR PIRACY, CHARLESTON, SOUTH CAROLINA, OCTOBER, 1718.

October 30.

The COURT at once proceeded to the trial of John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers, *alias* Evis, Samuel Booth, William Hewet and John Levit. The indictment was the same as in the last case, viz.: the piratically taking the sloop Francis and its cargo.

The *Prisoners* pleaded *Not Guilty*.

The *Clerk*. You, the prisoners at the bar: These good men that were called last, and have here appeared, are those that shall pass between our sovereign lord, the king, and you, upon your lives and your deaths; therefore, if you or any of you will challenge them or any of them as they come to the book to be sworn, and before they be sworn, you may, and you shall be heard

The *Jury* were sworn, whose names are as followeth: Samuel Prioleau, foreman, John Hodgson, Garrard Vanvilsen, Robert Harvey, Joshua Marriner, Thomas Fairchild, Henry Gennelack, John Jeffers, Charles Marche, John Grimbald, Benjamin Griffin, Joseph Massey.

THE EVIDENCE.

The witnesses against the prisoners were Ignatius Pell, the boatswain; Captain Thomas Read, Captain Peter Manwareing, and Mr. James Killing, his mate, who all gave the same evidence against these as against the others that were tried before.

The *Clerk*. Will any of you

prisoners ask the king's evidence any questions? No.

JUDGE TROTT. You the prisoners at the bar, you have heard how fully the witnesses have charged the facts upon you. Now what you have to say in your defense, I shall be ready to hear you.

The *Clerk*. John William

Smith, if you have any thing to say, you have liberty to speak. *Smith.* When we left Topsail inlet, I knew nothing but that we were going to St. Thomas'; but after we were out they hoisted the bloody flag. But I did before believe we were going to St. Thomas.'

The *Attorney General.* Did you bear arms on board of Major Bonnet? *Smith.* Yes, sir.

The *Attorney General.* Was you at the taking all those vessels? *Smith.* Yes, sir; but it was against my will.

The *Clerk.* John Carman, what have you to say? *Carman.* As for what I did on board Captain Thatch, I was forced; but when I came to North Carolina, I would not have went on board, but Major Bonnet showed me the Act of Grace; and when I entered myself on board, it was to get my bread, in hopes to have went where I might have had business; for when we left Topsail inlet, I had not signed the Articles.

Pell. But you gave the captain your word that you would.

Carman. When I was left in the sloop I endeavored to make my escape with the sloop.

JUDGE TROTT. So, I find you wanted a vessel of your own. *Carman.* No, but to have got one from them; but I could not.

The *Attorney General.* This confirms what the king's evidence proves against them.

The *Clerk.* John Thomas, what have you to say? *Thomas.* We had nothing left us, and we were on a maroon island, and Major Bonnet he came and told me I might go with him, but it was against my will to bear arms.

JUDGE TROTT. Was not you

off this bar? *Thomas.* Yes, but I was forced to it.

Mr. Hepworth. And was you not at the taking of Captain Manwareing's sloop? *Thomas.* Yes.

Mr. Hepworth. And had you not your share? *Thomas.* Yes, sir.

JUDGE TROTT. And yet you say you was not willing to go a pirating.

The *Clerk.* William Morrison, what have you to say? *Morrison.* Captain Thatch had run the sloop ashore, and Major Bonnet went up to the Governor for the Act of Grace; and when he returned he told me I might go to St. Thomas'; and after that he said provisions would fall short, and he should go on the coast of Virginia to see for some.

JUDGE TROTT. But was that your manner of going for a commission, to take thirteen vessels by the way? But was you not at the taking Manwareing's sloop? And had you not your share?

The *Clerk.* William Livers, alias Evis, what have you to say? *Evis.* After we came to North Carolina, and Captain Thatch had lost the ship, Major Bonnet told me he would give me my passage to St. Thomas', and he would endeavor to get a ship there, and I might go with him a privateering; but when he came to sea, I found how it was, and I would not consent for a long time; but at last they forced me to it.

JUDGE TROTT. But you had your share as well as the rest? *Evis.* They forced me to do what I did.

The *Clerk.* Samuel Booth,

what have you to say? *Booth.* as we came from Topsail inlet we met with the sloop *Revenge*; they boarded us and took us and I was a prisoner three weeks before I consented; and then they ordered me to the gun before I would consent.

JUDGE TROTT. But you had your share of Captain Manware-

ing's sloop. *Booth.* But my inclination was not that way.

The *Clerk.* William Hewet, what have you to say? *Hewet.* I designed to go to St. Thomas' with Major Bonnet, for he told me he was bound thither; so I was willing to go with him.

The *Clerk.* John Levit, what have you to say? Nothing.

The *Attorney General.* May it please your Honors, the boatswain and all the evidences prove the indictment upon each of the prisoner, that they were all at the taking of Captain Manwareing's sloop, and all had their shares.

JUDGE TROTT. Gentlemen of the jury, I think I need say but little on this matter. They all confess the fact of which they stand indicted. Some of them were old offenders, and all of them were proved to be at the taking of Captain Manwareing's sloop, and all took their shares: so that I think the fact is very fully and clearly proved upon them. But I shall leave that to your considerations, and I pray God direct you to give a true verdict.

The *Jury* found John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers, *alias* Evis, Samuel Booth, William Hewet, and John Levit, *Guilty*.

THE TRIAL OF EDDY, ANNAND, ROSS, DUNKIN, NICHOLS, RIDGE, KING, PERRY AND VIRGIN, FOR PIRACY, CHARLESTON, SOUTH CAROLINA, OCTOBER, 1718.

October 31.

Today were arraigned upon the same charges as in the two former cases, William Eddy, *alias* Nedy, Alexander Annand, George Ross, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry and Henry Virgin.

They pleaded *Not Guilty*.

The same jury was sworn as in the former case.

THE EVIDENCE.

Ignatius Pell, the boatswain, Captain Thomas Read, Captain Peter Manwareing and James Killing, the mate, gave the same evidence as in the former case against all the prisoners except Thomas Nichols.

Captain John Stevenson. George Ross, the gunner of the pirate's sloop was for blowing it up, and acknowledged that he would have set fire to the tram if he could.

Ignatius Pell. Nichols, after he came to sea, was very much discontented, but Major Bonnet said he would force him to go. He did not join with the rest of the men, but always separated himself from the company.

Captain Read. Nichols behaved different from the rest and did not join with them.

Captain Manwareing. Nich-

ols when he was aboard my sloop said he did hope it would be over with him in a little time for he hoped to get clear of them. He looked melancholy and never joined with the rest in their cabals when they were drinking. When Major Bonnet sent for him he refused to go and said he would die before he would fight.

Nichols. Mr. Killing, did you never hear me say I would leave that course of life?

JUDGE TROTT. Did you hear him say so? *Killing*. When he came on board he said to me he would give the whole world if he had it to be free from them. He refused to go on the Revenge until he was forced, and then told me he would not fight if he did lose his life for it. He was not with them when they

shared, and did not join their cabals.

JUDGE TROTT. He seems to be under a constraint, indeed, and therefore must be taken into consideration.

The *Clerk*. William Eddy, *alias* Nedy, what have you to say? *Nedy*. I never was on board Captain Manwareing's sloop, nor had no hand in it.

JUDGE TROTT. You was one of Bonnet's crew. *Nedy*. I never acted in it.

JUDGE TROTT. That is no excuse; it is not such or such a one that goes on board only but those that stand ready to assist them have as great a hand in the fact as the other; for men would not be taken by two or three, if they had no more help; so that the whole crew are equally concerned at such a time.

The *Clerk*. Alexander Anand, what have you to say? *Anand*. When we were at Topsail inlet, Major Bonnet told me he would go and get a clearance for the sloop, for he designed to go to St. Thomas' for a commission, and I might go with him. So I expected nothing till we were out at sea, and then I could not help it.

JUDGE TROTT. But why did you not declare against it then, and so not join with them? *Anand*. I was but one man and a stranger, and I was afraid I should have lost my life.

The *Clerk*. George Ross, what have you to say? *Ross*. I belonged to a sloop, and we met with Major Bonnet and was taken by him. Next day two of the men told me I must go with them. I answered them, No; I did not design to leave the sloop. But they told me I must; and they told me if I would but con-

sent I should have any thing. And a little after Captain Manwareing was taken.

JUDGE TROTT. And you had your share of Manwareing's goods? *Ross*. Yes.

JUDGE TROTT. So, though you were unwilling at first, you was willing afterward, and also fought Colonel Rhett when he came out against you. *Ross*. They told me it was Captain Thatch; for my part I did not know who Thatch was.

JUDGE TROTT. But pray what authority had you to fight anybody?

The *Clerk*. George Dunkin, you may speak what you have to say. *Dunkin*. After we were taken at the capes Major Bonnet came to me and told me I must go along with them. But I told him I could not leave the vessel. He told me I must.

JUDGE TROTT. But why did you join with them afterwards in taking your share of Manwareing's goods? and why did you fight Colonel Rhett and his men? If you had not fought, you might have saved the lives of twelve or fourteen men. *Dunkin*. Major Bonnet declared if any one refused to fight he would blow his brains out.

The *Clerk*. John Ridge, what have you to say? *Ridge*. After we came to Topsail inlet, and the ship was lost, Major Bonnet came and told me that he would go and accept the Act of Grace, and get a clearing for the sloop, and go to St. Thomas' for a commission, and he expected we would go with him; so when he was gone up to the country we rigged the sloop; so the quartermaster, the boatswain and he agreed together; but for my part I knew nothing what their de-

sign was; and so the first vessel we saw they took; but it was my resolution to go away by the first opportunity.

The *Clerk*. Matthew King, what have you to say? *King*. When we were at Topsail inlet Captain Thatch marooned us on an island, and left us; and Major Bonnet told us he would go to St. Thomas'; but the first prize we met with we took, having but little provisions on board.

JUDGE TROTT. How could you think of going to St. Thomas' without provisions?

The *Attorney General*. But the boatswain says there were provisions on board; and several barrels of flour, and several barrels of beef and pork.

JUDGE TROTT. What need had you then to go a-pirating? *King*. I did not know it till we were out.

JUDGE TROTT. Bonnet had not above five hands, and there were of you twenty-five; why would you be all commanded by them? You had no need to yield to them.

The *Clerk*. Daniel Perry, what have you to say? *Perry*. When Captain Thatch left us it was on a maroon island, and Major Bonnet came and told us he had the Act of Grace, and so we might go with him.

JUDGE TROT. Is that all you

have to say? You knew Thatch and Bonnet were both pirates, and why would you go with them again?

The *Clerk*. Henry Virgin, what have you to say? *Virgin*. Major Bonnet ordered about thirty hands to be ready, and in a little time we were ordered on board; and when we were about an hundred leagues from land he asked if there were any that would go a-marooning, and I believe there were two or three that promised him they would, though I did not.

JUDGE TROTT. But had you no opportunity to come from them? *Virgin*. If we had known anything of the Act of Grace when we were off this bar, we had come ashore. I went to make my escape, and leapt into the water, and had like to have been drowned.

JUDGE TROTT. How many vessels have you been at the taking and burning of, do you think? *Virgin*. I believe about three.

Mr. Hepworth. He was with them at the bay of Honduras, and all along. *Virgin*. But I never gave my consent; for Captain Thatch never asked any of us.

JUDGE TROTT. Would any of the prisoners say any more? If they will I am ready to hear them.

The *Attorney General*. May it please your honors, and you, gentlemen of the jury, these three, Nichols, Dunkin, and Ridge, seem to make some defense. As for Nichols, he was with them when Manwareing was taken; and the mate tells us, that he separated himself from the rest of the cabal; and when they shared, he told them they might do as they pleased with his share, for he hoped he should not be with them long;

so that it appears that he separated himself from the rest of the company from the very first: These things therefore ought to be considered. And as for Dunkin, he looked upon himself as a prisoner at first: but the boatswain indeed says he had his shares. And as for Ridge, he said, that he resolved to make his escape. For all the rest, they seem to be equally guilty.

JUDGE TROTT. Gentlemen of the jury, the prisoners at the bar stand indicted for felony and piracy, committed on a sloop belonging to Captain Peter Manwareing, commander, and not only did they break and board the said Manwareing's sloop, which was an act of piracy, but it hath been proved upon them, that they were at the taking of thirteen vessels after they left Topsail Inlet. Indeed there are three that have something to say in their defense, Nichols, Ridge and Dunkin. As for Dunkin, Pell says he had his share, as the rest had; Captain Read looked upon him as a prisoner, but Captain Manwareing did not. As for Ridge, he was at North Carolina, and took up with Bonnet to go to St. Thomas', and it is possible for a man to be deceived, for Pell declares that they were bound to St. Thomas', at first; and Killing, the mate, declared, that he told him he would free himself from that course of life the first opportunity. So I shall leave this to your consideration. But for Nichols, I think it is plain he was under constraint and force; for Pell himself declares that he would have nothing to do with their shares, and he did hope that he should not be long with them. Captain Manwareing and Mr. Killing, his mate, all confirm the same. And when he was sent for to come on board Bonnet, to go out to fight Colonel Rhett, he refused to go; and when he was forced to go on board, he said he would die before he would fight; and accordingly went into the hole, and did not fight Colonel Rhett. So that by the whole course of the evidence, I think it is very clear that he was under constraint and fear. As to the rest, I think the proof is full against them; but I shall leave them to your consideration. You know that as the innocent must not be condemned, so the guilty ought not to be acquitted.

Remember you have the lives of these persons in your hands; and I pray God direct you to give a true verdict.

The *Jury* found William Eddy *alias* Nedy, Alexander Anand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, and Henry Virgin, *Guilty*; and Thomas Nichols, *Not Guilty*.

THE TRIAL OF ROBBINS, MULLET, PRICE,
LOPEZ, AND LONG, FOR PIRACY,
CHARLESTON, SOUTH CARO-
LINA, OCTOBER, 1718,

October 31.

Upon the same charge as in the last three cases, the following were arraigned and pleaded *Not Guilty*: James Robbins, *alias* Rattle, James Mullet, *alias* Millet, Thomas Price, and John Lopez. Zachariah Long pleaded *Guilty*.

The following jurors were sworn: Samuel Proileau, foreman; John Hodgson, Garrat Vannelsin, Lucas Stoutenborough, Joshua Mariner, Thomas Fairchild, Henry Genelac, John Jeffers, Charles Marche, John Grimbball, Benjamin Griffin, Joseph Massey.

THE EVIDENCE.

The witnesses against the prisoners were:

Ignatius Pell, the boatswain; *Captain Thomas Read*; *Captain Peter Manwareing*, and *Mr. James Killing*, his mate, all gave the same evidence against these prisoners, as against the others that were tried before.

The Clerk. You, the prisoners at the bar, have heard what the king's evidence have sworn against you. Now is your time to make your defense. James Robbins, what have you to say? *Robbins*. I was on board the *Revenge* and then I was sent on board of Capt. Read's sloop, and was there four days; and then was sent on board the *Revenge* again; for I was about to run away, if I had an opportunity.

The Clerk. James Mullet, what have you to say? *Mullet*. When

we left Topsail inlet it was to go to St. Thomas'; so Major Bonnet told me, and I being on a maroon shore, I was willing to go with him.

The Clerk. Thomas Price, what have you to say? *Price*. Captain Thatch left us on a maroon shore, and had nothing left, and Major Bonnet told me I might go with him to St. Thomas'; but I designed not to go a-pirating.

JUDGE TROT. Had you no your share? *Price*. I was forced to do as I did when I was on board.

The Clerk. John Lopez, what have you to say. *Lopez*. I was at the bay of Honduras and was taken by Thatch and carried to Topsail inlet and there he marooned me on an island, and came with five hands and carried all away that we had, and

left us. And Major Bonnet told me he would go to St. Thomas', and I might go along with him. I told Captain Manwareing I would not go a-pirating, for I did not like it.

JUDGE TROTT. Did you not share a little before you came to Cape Fear? *Lopez*. Yes; but it was against my will.

JUDGE TROTT. Captain Manwareing, do you know anything

of this man? *Captain Manwareing*. All as I know, he told me he had a wife and children; and that he did not like that course of life. This is all I can say of him.

The *Clerk*. Zachariah Long, what have you to say? *Long*. When we sailed I knew nothing but that it was to go to St. Thomas' till afterwards, and then I must do as the rest did.

The JUDGE summed up the evidence to the *Jury*, which retired and returned into court with a verdict of *Guilty* against Mullet, Price, Lopez and Long, and a verdict of *Not Guilty* as to Robbins *alias* Rattles.

THE TRIAL OF ROBINSON, TUCKER, SCOT,
BAYLEY, PATERSON, SMITH, CARMAN,
AND THOMAS, FOR PIRACY, CHARLES-
TON, SOUTH CAROLINA, NOVEMBER,
1718.

November 1.

The COURT proceeded to arraign Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterson, John William Smith, Thomas Carman and John Thomas, on an indictment charging them with piratically seizing a ship called the *Fortune*, Thomas Read, commander, and taking from it certain goods and chattels, including money.⁷

All pleaded *Not Guilty*.

The *Jury* were sworn as follows: Timothy Bellamy, foreman; George Duckett, John Rivers, William Sheriff, Benjamin

⁷ "The jurors for our sovereign lord the king do upon their oath present, that Stede Bonnet alias Edwards, alias Thomas, late of the island of Barbadoes, mariner; David Heriot, late of the island of Jamaica, mariner; William Scot, late of Aberdeen, mariner; Job Bayley, late of London, mariner; Edward Robinson, late of Newcastle upon Tyne, mariner; Robert Tucker, late of the island of Jamaica, mariner; Neal Paterson, late of Aberdeen, mariner; John William Smith, late of Charlestown, mariner; Thomas Carman, late of Maidstone in Kent, mariner, and John Thomas, late of the island of Jamaica, mariner; the 31st of August, in the fifth year of the reign of our sovereign lord George, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, etc., by force, and arms, etc., upon the high sea, in a certain place called Cape Fear, in the latitude of 34° or thereabouts, and within the jurisdiction of the Court of Vice-Admiralty of the province of South Carolina, did piratically and feloniously set upon, board, break, and enter a certain merchant sloop called the *Fortune*, Thomas Read, commander, then being a sloop of certain persons (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault in and upon the said Thomas Read, and other his mariners (whose names to the jurors aforesaid are unknown). In the same sloop, against the peace of God, and of our now sovereign lord the king, then and there be-

Dennis, Hugh Durfey, Thomas Chambers, Daniel Townshend, John Lee, Thomas Bee, John Barton, Richard Fairchild.

THE EVIDENCE.

The *Clerk*. Call Ignatius Pell, the boatswain.

Mr. Hepworth. Do you know the prisoners at the bar? *Pell*. Yes, sir.

Mr. Hepworth. Give the Court an account of the taking Captain Thomas Read, and plundering of his sloop. *Pell*. Capt. Read was in company with two vessels more, which we took, but did not share, till we came to Cape Fear.

Mr. Hepworth. Were the goods mentioned in the indictment taken out? *Pell*. Yes, sir.

JUDGE TROTT. Did all the prisoners at the bar receive their shares? *Pell*. Yes.

The *Clerk*. Will any of you ask the king's evidence any questions? Edward Robinson, will you ask any questions? *Robinson*. Boatswain, do you not remember when we left Topsail inlet it was with a design to go

ing, piratically and feloniously did put the aforesaid Thomas Read, and others his mariners of the same sloop, in the sloop aforesaid, then being in corporal fear of their lives, then and there in the sloop aforesaid, upon the high sea, in the place aforesaid, called Cape Fear, in the latitude of 34°, or thereabouts, aforesaid, in the sloop aforesaid, and within the jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away six tierces of bread, of the value of 13l., current money of Pennsylvania; four barrels of bread, of the value of 4l., like current money of Pennsylvania; one barrel of linseed oil, of the value of 7l., like current money of Pennsylvania; two tierces of hams, of the value of 20l., like current money of Pennsylvania, and 20 barrels of flour, of the value of 20l., like current money of Pennsylvania; six China plates, of the value of 3l., like current money of Pennsylvania; seven iron-bound blocks, of the value of 40s., like current money of Pennsylvania; 90 fathoms of rigging, of the value of 3l., like current money of Pennsylvania; the said pump, with boxes and breaks, of the value of 20s., like current money of Pennsylvania; the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there upon the high sea aforesaid, in the aforesaid place, called Cape Fear, in the latitude of 34°, or thereabouts, aforesaid, in the sloop aforesaid, and within the jurisdiction aforesaid; being found in the aforesaid sloop, in the custody and possession of the said Thomas Read, and others his mariners in the same sloop, from the said Thomas Read, and others his mariners of the said sloop, and from their custody and possession, then and there, upon the high seas aforesaid, in the place aforesaid, called Cape Fear, in the latitude of 34°, or thereabouts, as aforesaid, in the sloop aforesaid, and within the jurisdiction aforesaid, and against the peace of our said now sovereign lord the king, his crown and dignity, etc."

to St. Thomas'? *Pell*. I do believe you might think we were going to St. Thomas', but the first vessel we saw, we consented to take, and you had your share as well as the rest.

The *Clerk*. Robert Tucker, will you ask any question? *Tucker*. No.

Mr. Hepworth. May it please your honors, we will proceed to call another evidence, Captain Peter Manwareing.

Mr. Hepworth. Do you know the prisoners at the bar? *Manwareing*. I know them all.

Mr. Hepworth. Please to give the Court an account of the sharing of Captain Read's goods at Cape Fear. *Manwareing*. As for taking of Captain Read, I can say nothing, because he was taken by them before I was taken; but when we came to Cape Fear, they shared what they had.

JUDGE TROTT. And had all the prisoners at the bar their shares? *Manwareing*. I did not see any of them refuse, and they were amongst the rest when they did share.

The *Clerk*. Will any of you ask the evidence any questions? The *Prisoners* ask no questions.

Mr. Hepworth. We will proceed to call another evidence. Captain Thomas Read, do you know the prisoners at the bar? *Read*. I know them all.

Mr. Hepworth. Please to give the Court an account of your being taken and plundered by them. *Read*. After we were taken, Robert Tucker with some others came on board and then we sailed to Cape Inlopen, where Captain Manwareing was taken, and after that to Cape Fear.

Mr. Hepworth. Were those goods taken out as are men-

tioned in the indictment? *Read*. Yes, sir.

JUDGE TROTT. Did all the prisoners receive their shares? *Read*. Yes, I did not see but what they did; they were all together when they shared.

The *Clerk*. Will any of you ask the evidence any questions? *Robinson*. Captain Read, when did you see me on board your sloop? *Read*. I cannot say I saw you on board; but you were with them when they shared.

JUDGE TROTT. If you were not on board the sloop, you was one of the crew, and, as I told you before, it is not they only are pirates that go on board of a vessel, but they who stand ready to assist are as much pirates as the other, and are as much concerned in the fact.

The *Clerk*. Will any of you ask any questions. *Prisoners*. No.

Mr. Hepworth. We will proceed to call another evidence. James Killing, do you know the prisoners at the bar? *Killing*. Yes, sir.

Mr. Hepworth. Give the Court an account of what you know of the taking of Captain Read. *Killing*. I can say but little to the matter till we came to Cape Fear, and there they shared the goods.

JUDGE TROTT. Did you see the goods taken out? *Killing*. I cannot say I saw them all taken out; but I saw them a-sharing of them together.

Mr. Hepworth. We will call another evidence, Francis Griffin, Captain Read's mate.

Mr. Hepworth. Do you know the prisoners at the bar? *Griffin*. Yes, sir.

Mr. Hepworth. Please to give an account of the taking of the

sloop you belonged to. *Griffin*. After we were taken Tucker and some more came on board and Tucker fell to beating and cutting the people with his cutlash, and cut one man's arm. So then we went to Cape James, alias Cape Inlopen, where Captain Manwareing was taken, and thence we sailed for Cape Fear.

Mr. Hepworth. Were all these goods mentioned in the indictment taken out? (That part of the indictment read.) *Griffin*. Yes, sir.

JUDGE TROTT. Did all the prisoners take their shares? *Griffin*. I know nothing to the contrary.

The *Clerk*. Will any of you ask the king's evidence any questions? No questions asked.

JUDGE TROTT. You the prisoners at the bar, what have you to say in your defenses? I am now ready to hear you.

The *Clerk*. Edward Robinson, what have you to say? *Robinson*. I have nothing to say, more than what I have said.

The *Clerk*. Robert Tucker, what have you to say? *Tucker*. I knew nothing but we were go-

ing to St. Thomas', when I engaged with Major Bonnet.

JUDGE TROTT. You was his quartermaster; and you was the person that cut the man with the cutlash, and abused people.

The *Clerk*. William Scot, what have you to say? *Scot*. I was never on board Captain Read.

JUDGE TROTT. You was never on board! What of that? You was one of the crew, and consented to it, and had your share.

The *Clerk*. Job Bayley and Neal Paterson, what have you to say? *Prisoners*. We have nothing more to say.

The *Clerk*. John William Smith, what have you to say? *Smith*. It was never my design to go a-pirating, and when I was at sea I could not help what others did.

JUDGE TROTT. If it was not your design at first you afterwards consented to it.

The *Clerk*. Thomas Carman and John Thomas, what have either of you to say? *Prisoners*. We have no more to say than what we have said.

The *Attorney General*. May it please your Honors, I think the evidence have plainly proved the prisoners at the bar guilty of the fact charged upon them in the indictment; so that they were all equally guilty.

JUDGE TROTT. Gentlemen of the jury, the prisoners at the bar stand indicted for felony and piracy, committed on a sloop belonging to Captain Thomas Read. All the evidences fully prove the fact upon them, that they were all equally guilty, and all shared in the goods and plunder; but Tucker abused the people, cut one man with his cutlash, so that he added barbarity to his other crimes. They all pretend they were under force and constraint; but it is but a suggestion of their own, without the least proof. But there is full proof of their

consenting. But I shall leave them to your consideration. But the case is so clear, that I believe you will not be long before you return with your verdict.

The *Jury*, after they had considered of their verdict, returned, and found Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterson, John William Smith, Thomas Carman, and John Thomas, *Guilty*.

THE TRIAL OF MORRISON, LIVERS, BOOTH,
HEWET, LEVIT, EDDY, ANNAND, ROSS,
DUNKIN, AND NICHOLS, FOR PIRACY,
CHARLESTON, SOUTH CAROLINA,
NOVEMBER, 1718.

November 1.

The COURT proceeded to arraign William Morrison, William Livers, *alias* Evis, Samuel Booth, William Hewet, John Levit, William Eddy, *alias* Nedy, Alexander Annand, George Ross, George Dunkin, and Thomas Nichols, upon the indictment in the former trial.

All pleaded *Not Guilty*, excepting John Levit, who pleaded *Guilty*.

The *Jury* were sworn: Thomas Bellamy, foreman, etc.

THE EVIDENCE.

Ignatius Pell and the rest of the witnesses in general, gave the same evidence against these prisoners, as against the former ones, only they were more particularly examined as to Thomas Nichols, and George Dunkin.

Mr. Hepworth. Pell, do you know the prisoners at the bar? *Pell.* Yes, sir; I know them all very well.

The *Attorney General.* Please to give the Court an account of the taking and plundering Captain Read, and begin with Nichols. *Pell.* Thomas Nichols was very much dissatisfied on board, and did not join with the rest of the company, and would not take the share, and said he hoped he should not continue long with them.

The *Foreman.* Do you know anything of Dunkin? How did he behave himself? *Pell.* I did not see but he was as active as any of the rest, and took his share as the rest did at Cape Fear.

JUDGE TROTT. And had all the prisoners their shares? *Pell.* Yes, excepting Nichols.

JUDGE TROTT. Were the goods mentioned in the indictment taken out of Read's sloop? *Pell.* Yes.

The *Clerk.* Will any of you ask the king's evidence any questions? No questions asked by the prisoners.

Mr. Hepworth. We will proceed to call another evidence. Captain Manwareing, do you know the prisoners at the bar?

Manwareing. I know them all very well.

Mr. Hepworth. Please to give the Court an account of their sharing Captain Read's goods at Cape Fear, and particularly how Nichols behaved himself.

Manwareing. When Nichols was on board my sloop he said several times he would get clear of them the first opportunity, and he hoped it would not be long first; and when Major Bonnet sent for all hands on board the Revenge he refused to go till he sent word if he would not come he would make him; and when he went he said, before he would fight, he would die; and he always kept himself from the company, and from their cabals.

JUDGE TROTT. Do you know anything of Dunkin? *Manwareing.* What I can say is, there was some brown bread upon deck and he said it was fit for nothing but negroes to eat, and I told him I wished he might never want it; so they went and brought some whiter out of the hole.

Mr. Hepworth. How did he behave himself? *Manwareing.* I saw nothing but he was as the rest were.

Mr. Hepworth. Would any of you ask the king's evidence any questions? No questions asked by the prisoners.

Mr. Hepworth. Please your honors, we proceed to call another evidence, James Killing.

Mr. Hepworth. Do you know the prisoners at the bar? *Killing.* I know them all very well.

Mr. Hepworth. Please to give the Court an account of what you know of their taking and plundering Captain Read; and first begin with Nichols. *Kill-*

ing. I remember when he was on board our sloop and Major Bonnet sent for him, when he went off he said he hoped to get clear of them and he would die before he would fight.

JUDGE TROTT. Pell, do you know whether he did fight Col. Rhett or not? *Pell.* He did not fight and if one that Major Bonnet loved very well had not been shot down by his side he had blowed his brains out; for he had his pistol ready.

Mr. Hepworth. How did Dunkin behave himself? *Pell.* I can say nothing for any of the rest, but that they were all as one, and had all their shares.

The Clerk. Would any of you ask the king's evidence any questions? No questions asked by the prisoners.

Mr. Hepworth. We will proceed to call another evidence. Captain Thomas Read, do you know the prisoners at the bar? *Read.* I know them all very well.

Mr. Hepworth. Please to give the Court an account of what goods were taken from you and how the prisoners behaved themselves; and first of Nichols. *Read.* The most of the time he was on board Captain Manwareing's sloop I heard him say he did not like that course of life, and the last words I heard Major Bonnet say to him was that he would force no man to go against his will.

JUDGE TROTT. Can you say anything of Dunkin? *Read.* As for Dunkin, I did not see but he acted as the rest did.

Dunkin. Captain Read, it was against my will.

Mr. Hepworth. Captain Read, were these goods taken out of you, as are mentioned in the in-

dictment? (That part of the indictment read.) Were all these goods taken out? *Read.* Yes.

The *Clerk.* Will any of you ask any questions? George Dunkin, will you ask any questions?

Dunkin. Captain Read, when did you see me as active as any of the rest? *Read.* Before Captain Manwareing was taken I thought you had been a prisoner, but afterwards I saw no difference.

JUDGE TROTT. You was one of Bonnet's crew; one of that company.

Mr. Hepworth. We proceed to call another evidence. Francis Griffin, Captain Read's mate.

Mr. Hepworth. Do you know the prisoners at the bar? *Griffin.* I know them all.

Mr. Hepworth. Give an account of what you know of Nichols, and the rest of the prisoners. *Griffin.* As for Nichols, he was a man I know nothing of, he being on board of Manwareings' sloop.

Mr. Hepworth. What do you know of Dunkin? *Griffin.* I knew nothing of him till we were come to Cape Fear, and I saw no difference, but he shared among the rest.

Mr. Hepworth. Were those goods taken out of the sloop, the goods mentioned in the indictment? *Griffin.* Yes, sir.

JUDGE TROTT. Now you the prisoners, what you have to say in your defense I shall be ready to hear.

The *Clerk.* William Morrison, what have you to say? *Morrison.* I have no more to say than I have said already.

The *Clerk.* William Livers, alias Evis, what have you to say? *Evis.* Nothing more.

The *Clerk.* Samuel Booth. *Booth.* When I went on board Major Bonnet, it was to go to St. Thomas' with him.

JUDGE TROTT. Why had you not continued at North Carolina, since you could not continue here? *Booth.* I thought to have had better business there.

The *Clerk.* John Levit, William Eddy, alias Nedy, Alexander Annand. *Prisoners.* We were forced to go and did not know what they would do.

The *Attorney General.* But did you not know what you did when you shared? You knew that did not belong to you, did you not?

The *Clerk.* George Ross, George Dunkin, Thomas Nichols, asked no questions; only Dunkin delivered in a paper, which was read in court, and contained a testimony of his former behavior when in Scotland.

The *Attorney General.* Please, your Honors and you, gentlemen of the jury, I think it appears from the evidence, that Nichols was under constraint, and forced. As for Dunkin and the rest, they all took their shares at Cape Fear.

JUDGE TROTT. Gentlemen of the jury, the prisoners stand indicted for felony and piracy committed on a sloop belonging to Captain Thomas Read. As for Nichols, Pell says, that he was not joined to the company, and said, "As for his share,

they might do what they pleased, for he hoped he should not be with them long"; and when Major Bonnet sent for him on board, he refused to fight Colonel Rhett; and if another had not been killed, Major Bonnet had blown his brains out. Captain Manwareing says he refused his share, and kept himself from the company and from their cabals; and he said, when sent for on board, "that he would die before he would fight." And Captain Read says that Major Bonnet said, "that he would put him ashore, for he would force no man against his will." And Killing says that he told him, "that he would not fight Colonel Rhett," when Major Bonnet sent for him on board the *Revenge*. So that I think it plainly appears he was under constraint. But for Dunkin, he says of himself indeed that he was a prisoner, and under constraint; but Pell says he was not, and that he took his share, and was as the rest were. And Captain Manwareing says, that he complained of the bread, that was fit for none but negroes: so I shall leave you to consider that. As for the rest, they have but little to say in their defense, and I think the evidence have proved the fact fully upon them. But I shall leave this to your consideration; and remember you have the lives of these persons in your hands.

The *Jury*, after they had considered of their verdict, returned and found William Morrison, William Livers, *alias* Evis, Samuel Booth, William Hewit, William Eddy, *alias* Nedy, Alexander Annand, George Ross and George Dunkin, *Guilty*; and Thomas Nichols, *Not Guilty*.

November 3.

Today the COURT proceeded to arraign John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, *alias* Rattle, James Mullet, *alias* Millet, Thomas Price, James Wilson, John Lopez, and Zachariah Long, upon a similar indictment for taking Captain Read and his ship.

Ridge, King, Virgin, Robbins, *alias* Rattle, Mullet, *alias* Millet, Price, Lopez and Long pleaded *Not Guilty*; Daniel Perry and James Wilson pleaded *Guilty*.

The *Jury*: Samuel Proileau, foreman; John Hodgson, Gar-rat Vanvelsin, Lucas Stoutenborough, Joshua Mariner, Thomas Fairchild, Henry Genelac, Benjamin Griffin, Charles Marche, John Grimball, Nicholas Stephens, William Harvey.

The witnesses against the prisoners were the same as in the former cases and the *Jury* found them all *Guilty*.

THE TRIAL OF BRIERLY, BOYD, SHARP, CLARKE, AND GERRARD, FOR PIRACY, CHARLESTON, SOUTH CAROLINA, 1718.

November 3.

The Grand Jury returned an indictment against John Brierly, *alias* Timber-head, Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, for feloniously and piratically entering the sloop Francis belonging to Captain Peter Manwareing, the commander, and taking certain goods out of the same at Cape Fear.

And another indictment against the same persons for feloniously and piratically entering the sloop Fortune, belonging to Captain Thomas Read, commander, and taking certain goods out of the same at Cape Fear.

Then the COURT proceeded to arraign the said John Brierly, *alias* Timber-head, Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, upon the first indictment.

To which indictment they all pleaded *Not Guilty*.

The following *Jurors* were sworn: Timothy Bellamy, foreman; George Duckett, John Rivers, William Sheriffe, Benjamin Dennis, Hugh Durfey, Thomas Chambers, Daniel Townshend, John Lee, Thomas Bee, John Barton, and Richard Fairchild.

THE EVIDENCE.

The Clerk. Call Ignatius Pell.

Mr. Hepworth. Pell, do you know the prisoners at the bar?

Pell. I know them all very well.

Mr. Hepworth. Please to give an account of what you know of their behavior at Cape Fear.

Pell. John Brierly and Robert Boyd came on board three or four days after we came to Cape Fear.

JUDGE TROTT. You took them

first, did you not? Pell. Yes; we sent off our dory and took them.

JUDGE TROTT. From whence did they come? Pell. From North Carolina.

The Attorney General. How long after they came on board did they join themselves to the company. Pell. Brierly did very soon, but Boyd did not so soon, though he did afterwards,

and for Sharp, I do not know that ever he was joined to the company.

JUDGE TROTT. And how did Clarke behave himself? *Pell.* Jonathan Clarke and one — came in from South Carolina; they went away from the sloop; and then after some days Clarke returned again, but it was with hunger, though he said then it was not.

The *Attorney General*. Were there any goods taken out of Captain Read's sloop after he had joined himself a second time? *Pell.* I cannot say that certainly.

JUDGE TROTT. Nor you cannot say positively there were? *Pell.* No.

Mr. Hepworth. What do you know of Gerard? *Pell.* I can say nothing to him.

The *Clerk*. Will any of you ask the evidence any questions? John Brierly, will you ask any questions?

Brierly. Pell, you know I often said I would not bear arms and that I desired no share. *Pell.* But John, you know you had your arms ready as well as the rest, and that you had your share.

The *Clerk*. Robert Boyd, will you ask any questions? *Boyd.* No, sir.

The *Clerk*. Rowland Sharp, will you? *Sharp.* No, sir.

The *Clerk*. Jonathan Clarke, will you ask any questions? *Clarke.* Pell, do not you remember that I was abaft, and one of the negroes came and damned me, and asked me what I did there; why I did not go and work amongst the rest; and told me I should be used as a negro? *Pell.* I do remember it was so.

Mr. Hepworth. We proceed

to call another evidence, Captain Thomas Read.

The *Attorney General*. Captain Read, please to begin with Brierly. *Read.* Brierly came on board one morning very early and helped to take out several goods.

Mr. Hepworth. Do you know what goods? *Read.* Some rum and sugar.

JUDGE TROTT. Do you know those goods to be taken out? *Read.* Yes.

JUDGE TROTT. How did he behave himself when Major Bonnet sent for him on board to fight Colonel Rhett? *Read.* I cannot tell.

Mr. Hepworth. How did Boyd behave himself? *Read.* I took him to be a prisoner like myself at first, till he was sent for on board the *Revenge* by Major Bonnet to fight Colonel Rhett.

The *Attorney General*. What made you think he was a prisoner? *Read.* Because he was not employed in any business as the rest were.

JUDGE TROTT. That day they engaged Colonel Rhett, was he on board your sloop? *Read.* Yes, and Major Bonnet sent for all hands on board the *Revenge*.

The *Attorney General*. What do you say of Sharp? *Read.* I can say nothing of him.

The *Attorney General*. What have you to say of Clarke? *Read.* He run away for a time, and then he returned again after some days.

The *Attorney General*. Was there any goods taken out after he returned? *Read.* Yes, sir.

JUDGE TROTT. Did Clarke himself take out those goods? *Read.* That I cannot tell, and as for Gerrard, he belonged to

Captain Manwareing, and as the Captain and I was together, he came and told us how they used him; but he was sorry for what he had done, and was resolved to make his escape the first opportunity he had to get away.

The *Clerk*. Have any of you any questions to ask the king's evidence? The prisoners ask no questions.

Mr. Hepworth. We proceed to call another evidence, Francis Griffin.

Mr. Hepworth. Look upon the prisoners; do you know them? *Griffin*. I know them all.

Mr. Hepworth. Begin with John Brierly. *Griffin*. He was on board of us some time when we were at Cape Fear, and he was as the rest of the company was; and he said he hoped when Major Bonnet should go to the northward, to be revenged on some at the Hore-kills, for some offense they had given him there.

JUDGE TROTT. You looked upon him as one of the crew? *Griffin*. Yes.

JUDGE TROTT. What do you know of Boyd? *Griffin*. He was on board of us some time, and when Major Bonnet sent for all hands on board the Revenge, he went with them; but as for Sharp, I can say nothing of him, nor of Clarke, only he run away, and in some days he returned again.

Mr. Hepworth. We shall call another evidence, Captain Peter Manwareing.

Mr. Hepworth. Captain Manwareing, do you know the prisoners at the bar? *Manwareing*. I know them all very well.

Mr. Hepworth. Please to give

the Court an account of what you know of them, and begin with Brierly. *Manwareing*. Brierly, the 12th day of August he came on board, and a little after he was on board I did not see but he acted as the rest did, and he hoped to come up with some at the Hore-kills; but as for Boyd, he was on board Captain Read's sloop.

JUDGE TROTT. What have you to say of Sharp? *Manwareing*. Some time after he came to Cape Fear, and Major Bonnet sent for him on board the Revenge, he said he would go on shore if he had an opportunity, and I never saw him among the rest of the company.

JUDGE TROTT. What have you to say of Jonathan Clarke? *Manwareing*. After we had been at Cape Fear some days, Jonathan Clarke and one Dolton, came in and Major Bonnet sent the dory and brought them on board; and after some days, Clarke and — went away and was gone some days, and then returned again, and then he was ordered to work among the negroes. As for my man Gerrard, he came and told me he was not able to bear any longer, but was forced to comply with them, for they told him they would have no regard for the color, but would make a slave of him; but he did not receive any of their goods; and when he was at home, he had the character of an honest man and fought for his king and country.

Mr. Hepworth. We will call another evidence, James Killing.

Mr. Hepworth. Do you know the prisoners at the bar? *Killing*. I know them all very well.

Mr. Hepworth. Give the Court an account of what you

know of their sharing at Cape Fear. *Killing.* Brierly was put on board our sloop there to work at his trade, and would often say, he had a quarrel against some at the Hore-kills, he hoped to revenge himself upon them.

JUDGE TROTT. Why, what had they done to him? *Killing.* He was in debt, and therefore he owed them a grudge; but for the rest I can say nothing.

JUDGE TROTT. You the prisoners, what have you to say in your defense? I shall now be ready to hear.

The *Clerk.* John Brierly, what have you to say? *Brierly.* Mr. Boyd and I was in a leaky canoe, and we were afraid she would sink, and so we were obliged to keep along shore; and I stood up and thought I saw a vessel or two, and he bid me look again, and then I saw it was a vessel. Then sent off their dory and asked if we would consent to go with them, and we said no; but they said they would break the canoe, and we might go where we pleased. So they made me consent to go on board the *Revenge*, but I never joined myself while I was on board. And then I was ordered on board Captain Manwareing, and there I worked, but I never bore arms nor did fight Colonel Rhett.

The *Clerk.* Rowland Sharp, what have you to say? *Sharp.* After I was taken I went on shore and traveled four days in the woods without eating or drinking, and could find the way to no plantation, and so was forced to return again, and I refused to sign the articles, and one of the men came and told

me I was to be shot, and I had the liberty to choose the four men that should do it, and the boatswain went about to get hands to beg me off, but I was resolved to make my escape the first opportunity.

The *Clerk.* Jonathan Clarke, what have you to say? *Clarke.* The 12th of August, coming into Cape Fear with Mr. Dolton, he thought he saw the mast of a vessel, and I desired him to take the helm that I might see, for if there was any vessel it was pirates, but Dolton said it was nothing but an old tree; but when we came farther in, we saw three sloops, and they sent off their dory and took us, and carried us aboard the *Revenge*, and Major Bonnet asked us from whence we came and I told him. He asked me where we were a-going; we told him. The next day he asked if I did not design to do as they did? I told him no. Then I went away with a design to get clear of them, but with hunger was forced to return again, and they asked me if I would sign the articles then and I refused, and one of the negroes came and damned me and asked me why I did not go to the pump and told me that was my business; and Major Bonnet told me if I did not he would make me governor of the first island he came to, for he would put me ashore and leave me there.

The *Clerk.* Thomas Gerrard, what have you to say? *Gerrard.* Some time after we were taken, one of the men came and asked if I would join with them; I told him no; he said I was but* like a negro, and they made slaves of us all of that color if

*He was a Mulatto.

they did not join, so I did it with a design to get clear of them the first opportunity, and I never shared any of the goods.

JUDGE TROTT. Pell, did he

never share? Pell. He never did share.

JUDGE TROTT. And did they threaten to make a slave of him if he did not join? Pell. Yes.

The *Attorney General*. May it please your Honors, and you, the gentlemen of the jury, as for Brierly and Boyd, it appears from the evidence that they came to Cape Fear three or four days after Bonnet: Brierly took up very soon, and Boyd some time after; and that there were several goods taken out of Captain Manwareing's sloop, and particularly rum and sugar. And as for Sharp, there is no evidence proves anything fully on him; and therefore I think he may be looked upon as under constraint and force. As for Gerrard, I think the same; for though he signed the articles, yet no evidence proves that he did share any of the goods. Nay, the boatswain says he did not share; and if they did not comply with them, they would make a slave of him all the days of his life. And Captain Manwareing says he had the character of an honest man at home; and that he fought for his king and country.

JUDGE TROTT. Gentlemen of the jury, the prisoners at the bar stand charged with piracy, committed on a sloop belonging to Captain Manwareing; and the evidence have proved it fully upon Brierly and Boyd; and particularly, that there was rum and sugar taken out. Brierly took up very soon with them, and had his share; and that he hoped to revenge himself on some at the Hore-kills. Boyd did not take up so soon; but he did afterward. As for Sharp, he would have made his escape, but could not; and Major Bonnet told him he should die, and bid him choose four men to shoot him; and though he signed the articles, he never shared, as Pell proves. As for Clarke, he says he was forced to do it; that he went away, and hunger forced him to return again, and the negroes insulted over him; and Major Bonnet told him, he would make him Governor of an island, and leave him there; and none of the evidence proves that he shared any of the goods. And as for

Gerrard, he was threatened to be made a slave of; though indeed he had been better made a slave than go a-pirating. But Captain Manwareing says he had the report of an honest man in his country; and that he was faithful to his king and country. So I shall leave those to your consideration. And if you think they were under force and constraint, as indeed it appears to me, by the whole course of the evidence, that they were, then you ought to acquit them.

The *Jury*, after they had considered of their verdict, returned, found John Brierly, *alias* Timber-head, and Robert Boyd, *Guilty*; Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, *Not Guilty*.

November 4.

The COURT proceeded to arraign the said John Brierly, *alias* Timber-head, Robert Boyd, Rowland Sharp, Jonathan Clarke and Thomas Gerrard, upon the second indictment.

All pleaded *Not Guilty*.

Then the COURT proceeded upon their trial.

The *Jurors* were sworn, whose names are as follows: Samuel Proileau, foreman; John Hodgson, Garrat Vanvelsin, Lucas Stoutenborough, Joshua Mariner, Thomas Fairchild, Henry Genelac, John Ballentine, Charles Marche, John Grimball, Nicholas Stephens, William Harvey.

THE EVIDENCE.

The *Clerk*. Call Ignatius Pell.

Mr. Hepworth. Pell, give an account first of Brierly and Boyd. *Pell*. As for Brierly, he soon united himself to the company; and when we engaged Colonel Rhett, he was as active as any of the rest. But for Boyd, he was sent on board Captain Read's sloop, and was there till Major Bonnet sent for him on board the Revenge, to fight Colonel Rhett.

JUDGE TROTT. And did he fight? *Pell*. He was wounded

with one of the first shot, and so was carried down into the hole; so that he never did fight.

Mr. Dean. Why was he put on board the sloop? *Pell*. To look after the sloop, I suppose.

The *Attorney General*. Had he his arms ready when you engaged Colonel Rhett? *Pell*. Yes, sir; so we had all in general, but I did not see him use them. As for the other three, I thought them to be under constraint, and they did not fight Colonel Rhett.

The *Clerk*. Will any of you ask the king's evidence any questions? No questions asked by the prisoners.

Mr. Hepworth. We proceed to call another evidence, Captain Peter Manwareing.

Mr. Hepworth. Captain Manwareing, give an account of the prisoners of their fighting Colonel Rhett, and begin with Brierly and Boyd. *Manwareing*. They came on board and Brierly soon became one of the company, and hoped to revenge himself on them at the Horekills, and acted as the rest did when they engaged Colonel Rhett. But as for Boyd, I took him to be a prisoner for some time.

Captain Manwareing's evidence concerning Sharpe, Clarke, and Gerrard, was the same as in the former trial.

Mr. Hepworth. Will any of you ask the king's evidence any questions? No questions asked by the prisoners.

Mr. Hepworth. We will call another evidence, James Killing.

Mr. Hepworth. Give an account of the prisoners at the bar, and first of Brierly and Boyd *Killing*. As for Boyd, he was on board Captain Read after we came to Cape Fear, till they were sent for to fight Colonel Rhett; and I thought he had been a prisoner till then and I talked very free to him. And as for Brierly, he was as the rest of the company.

The *Attorney General*. Were there any goods taken out after Brierly came on board? *Killing*. Yes.

Mr. Hepworth. Do you know what goods? *Killing*. I can-

not remember every particular sort.

His Evidence against the other three was the same as in the former trial.

The *Clerk*. Will any of you ask the king's evidence any questions? No questions asked by the prisoners.

Mr. Hepworth. We will call another evidence, Captain Thomas Read.

Mr. Hepworth. Captain Read, please to give an account of the prisoners at the bar, and first of Brierly and Boyd. *Read*. As for Brierly, I did not see but he acted as all the rest of the company did.

JUDGE TROTT. What have you to say of Boyd? *Read*. I thought him to be a prisoner, and discoursed freely with him, which if he had discovered, it had done me an injury; for I heard him wish we might meet with a 30 gun ship and I told him I should be glad of it as well as he.

Foreman. What did he wish to meet with a 30 gun ship for?

Read. To free us from the pirates. His evidence against the other three was the same as before.

The *Clerk*. Will any of you ask the king's evidence any questions? None of the prisoners asked any questions.

JUDGE TROTT. You the prisoners may now speak what you have to say.

The *Clerk*. What have you to say, John Brierly? *Brierly*. When Mr. Boyd and I came in at Cape Fear, we saw three sloops, and then came off a dory with some hands, and haled us, and then carried us on board; but we did not know that they were marooners. But Mr. Boyd

trembled and shook like a leaf; and I told him not to be afraid. So they carried us on board.

JUDGE TROTT. And so you united yourself with them to make up the company? *Brierly*. I was forced to do what I did.

The *Clerk*. Robert Boyd, what have you to say? *Boyd*. After we came to Cape Fear, and was taken by Bonnet's men, I was on board the *Revenge* for some time, and they asked me to sign the Articles, the which I refused, and Major Bonnet told

me, if I did not, he would maroon me on an island, and leave me. And after I was sent on board Captain Read's sloop, I had nothing but the provisions I lived on; I never had anything more. And when Major Bonnet sent for all on board to fight Colonel Rhett, it would have been present death for any to refuse, and I was wounded with one of the first shot.

(The other three prisoners made it appear they were innocent, as in the other indictment.)

The *Attorney General*. May it please your Honors, and you, the gentlemen of the jury, the evidence proves the fact fully on Brierly; that he soon engaged with Bonnet after he was taken, and that he acted as the rest of the company did; and that he hoped to be revenged on some at the Hore-kills. As for Boyd, though he was on board the pirate-sloop, he never took part with them; and he wished for a 30-gun ship, that they might be set at liberty. And Captain Read took him for a prisoner, till he was sent for on board the *Revenge*; and then the boatswain says he did not fight. As for the other three, I think it appears they were under constraint and force.

JUDGE TROTT. Gentlemen of the jury, the prisoners at the bar stand indicted for piratically taking Captain Read, in the sloop *Fortune*. As for Brierly, the evidence proves it very plain and fully upon him, that he took up very soon with them, and did hope to revenge himself upon some of the Hore-kills, and that he engaged against Colonel Rhett. As for Boyd, Captain Read looked upon him as a prisoner; and that he had such discourse with him, that if he had disclosed it to Bonnet's crew, it had done him much hurt; and the boatswain says, he did not fight Colonel Rhett. And as for the other three, I think it hath been fully proved they were under constraint. But I shall leave it to your consideration.

After they had considered of their verdict, the *Jury* returned, and found John Brierly, *alias* Timber-head, *Guilty*;

Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, *Not Guilty*.

THE SENTENCES OF THE PIRATES.

November 5.

Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers, *alias* Evis, Samuel Booth, William Hewet, John Levit, William Eddy, *alias* Nedy, Alexander Annand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet, *alias* Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly, *alias* Timber-head, and Robert Boyd, who stood convicted of piracies, were brought to the bar, and were severally asked what they could say why judgment of death should not pass upon them?

And they having nothing to allege in arrest of judgment, proclamation for silence was made, while the Judge of the Court of Vice Admiralty pronounced sentence of death upon the prisoners.

JUDGE TROTT. You, the prisoners at the bar, Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers, *alias* Evis, Samuel Booth, William Hewet, John Levit, William Eddy, *alias* Nedy, Alexander Annand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet, *alias* Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly, and Robert Boyd, stand here convicted of piracy.

You have been indicted but for two acts of piracy; but you know upon the trials it was fully proved against most of you, that you piratically took thirteen vessels since you joined Major Bonnet, and sailed from Topsail Inlet, in North Carolina.

So that many of you might have been convicted on eleven more indictments of piracy.

Besides several of you were proved to be pirates before that time, as belonging to Thatch's crew; and so were guilty of the several piracies committed while you belonged to him.

You cannot but acknowledge that you have all of you had a fair and indifferent trial.

You were fully heard, not only as to all you could pretend to say in your own defenses, but also as to what you allege in mitigation of your crimes.

And indeed when you saw that the facts laid in the indictment were so fully proved against you, though most of you pleaded not guilty for form sake, yet in the open court, upon your trials, most of you acknowledged the facts charged upon you. Therefore, no one can think but that you were all of you justly found guilty; and your consciences will oblige you to acknowledge the same. So that there is not any of you who can complain of any hardships at your trials.

As to the crime that you are convicted of, which is piracy, the evil and wickedness of it is evident to the reason of all men. So that it needs no words to aggravate the same: it is so destructive of all trade and commerce between nation and nation, that pirates are called enemies to mankind, with whom no faith nor oath ought to be kept; and they are termed in our law brutes and beasts of prey, and therefore it is the interest, as well as duty, of all governments to bring such offenders to punishment.

Though the greatness of your crime is such, that no one can think but that the sentence of death which will now be passed upon you is justly due to you for the same; yet as pity and compassion, even to the worst of criminals, when brought to punishment, are natural to all men who have not flung off all sense of humanity, but much more firmly ingrafted in the hearts of Christians; therefore, surely it cannot but be a very melancholy spectacle to see so many persons in the prime of their years, in perfect health and strength, dropping into the grave. And which is a more sorrowful consideration, that

they are in the height of their sins; and, therefore, without the infinite mercies of God, through the satisfaction of Christ, must necessarily sink into the dwellings of everlasting misery.

And, indeed, most sad and deplorable is the condition you have brought yourselves to: to be adjudged by the laws of your country unworthy any longer to live, and to tread the earth, or breathe the air; and that no further good or benefit can be expected from you but by the example of your deaths; and to stand like marks or fatal rocks and sands, to warn others from the same shipwreck and ruin for the future.

As most of you have been mariners by profession, and every one of you have several times been at sea; so I cannot but wonder, that being so often at sea, you should not consider the great power of God in creating the same, and His providence in preserving those who pass upon it; and consequently, that such thoughts should not cause in you a dread of his power, and a love of his goodness.

The consideration of God's power in making the sea, and setting bounds to the raging waters thereof, is used as an argument by God himself, why men should fear him; for thus God expresseth it by the prophet Jeremiah: "Fear ye not me? Saith the Lord: will ye not tremble at my presence, which have placed the sand for the bound of the sea by a perpetual decree, that it cannot pass it; and though the waves thereof toss themselves, yet can they not prevail: though they fear, yet can they not pass over it." Jer., v. 22. Or as it is expressed in the book of Job: "Hitherto shalt thou come, but no farther; and here shall thy proud waves be stayed." Job xxxvii, v. 11.

The Psalmist saith, that "they that go down to the sea in ships, that do business in great waters; these see the works of the Lord, and his wonders in the deep. For he commandeth and raiseth the stormy wind, which lifteth up the waves thereof. They mount up to the heaven, they go down again to the depths, their soul is melted because of trouble. They reel to and fro, and stagger like a drunken man, and are at their wits end. Then they cry unto the Lord in their trouble, and

he bringeth them out of their distresses. He maketh a storm a calm, so that the waves thereof are still. Then they are glad because they be quiet; so he bringeth them unto their desired haven." But the practical inference that he draws from these is, "That men should praise the Lord for His goodness, and for His wonderful works to the children of men." Psal. cvii, v. 23, 24, 25, 26, 27, 28, 29, 30, 31.

But instead of having a sense of God's power and goodness, in preserving you and others upon the sea, your frequent preservations hardened you into a contempt of the danger you were in; and you thereby slighted your deliverance. And though you could not but see the many natural dangers that attend the seas, and those who had occasion to go upon the same, yet you were resolved that you would contribute what in you lay to the hazards thereof, by the frequent rapines and murders which you committed. So that what the prophet saith of the pride of the Tyrians, may be applied to you, "That you caused your terror to be on all that haunt the sea." Ezek. xxvi, v. 17.

Although it may be, while you were in your seeming prosperity, and went on in your committing "Spoils and robberies without control, you might make a mock at your sins." Prov. xiv, v. 9, and Ch. x, v. 23, and "say in your hearts, God hath forgotten, He hideth His face, He will never see it"; Psal. x, v. 11; xciv, v. 7; lxiv, v. 5, and Job xxii, v. 13, yet now that you see that God's hand hath reached you, and His power hath brought you to public justice; I hope your present unhappy condition hath had a good effect upon you, that it hath raised in you more serious thoughts; and that you are now sensible of the greatness of your sins, and that you will sincerely repent you of the same.

As to the great evil and sinfulness of the facts you have committed, surely you cannot but know that it is one of the express commandments of God, "Thou shalt not steal," Exod. xx, v. 15, and the apostle St. Paul expressly affirms, that "thieves shall not inherit the kingdom of God." I Cor. vi, v. 10.

But then remember that to theft you have added the sin of murder, in destroying those persons who were sent by lawful authority to suppress you, and to put a stop to your wicked actions. For you being no way authorized to use the sword, or to fight any one, every one of those persons who fell by your hands, were murdered; and their blood now cries for vengeance against you: for it is the voice of nature, as well as the revealed law of God, that "Whoso sheddeth man's blood, by man shall his blood be shed." Gen. ix, v. 6.

It is the commandment of God, "Thou shalt do no murder," Exod. xx, v. 13, and the apostle enumerating several of the works of the flesh, amongst the rest reckons murders; and then concludes with these remarkable words: "Of which I tell you before, as I have told you in time past, that they which do such things shall not inherit the kingdom of God." Gal. v, v. 21.

And murderers are threatened to have "their part in the lake which burneth with fire and brimstone, which is the second death. 2 Rev. xxi, v. 8; See Ch. xxii, v. 15. Words which carry that terror with them, that considering your circumstances, and your guilt, surely the sound of them must make you tremble, "For who can dwell with everlasting burnings?" Isa. xxxiii, v. 14.

I suppose you all know that you must appear before the tribunal of Christ; from whose infinite knowledge none of your actions can be hid, and from whose infinite power no one can rescue you or protect you; and from whom, without a true and unfeigned repentance for all your sins passed, you can expect no other than that dreadful sentence of condemnation, "Depart from me, ye cursed, into everlasting fire, prepared for the devil and his angels." Matth. xxv. 41.

I do not speak this to overwhelm you with sorrow, much less to drive you into despair of God's mercy, which is one of the worst of sins, and which I hope you will not add to your other offenses against God. But I mention this to you, to make you sensible of the great danger of your condition, without true and unfeigned repentance. For seeing I can give you

no hopes of pardon from man, I hope you will improve the short time you have now left you, to make your peace with God, and to obtain pardon from Him.

And I wish that what I now say to you in this your deplorable conditions, may make you all sensible of the greatness of your offenses, that so you may become truly penitent; which if you are, you may yet hope for mercy from God: "For though your sins be as scarlet (even dyed in blood) yet he can make them white as snow." Isa. i, v. 18.

Therefore, if you will now turn unto God by a true and unfeigned repentance, He will not refuse you nor reject you, even now in your great distress.

For the threatenings declared by God in the scriptures against sinners, must always be understood against impenitent sinners; for God hath declared himself to be "merciful and gracious." Exod. xxxiv, v. 6. "And that He hath no pleasure in the death of the wicked, but that the wicked turn from his way and live." Ezek. xxxiii, v. 11; Ch. xvii, v. 23. And hath promised, that when he doth so, "he shall save his soul alive." v. 27.

But be sure to remember that you must go to God, in and through the alone merits and intercession of his Son, Jesus Christ, who hath made satisfaction to the justice of God for us: "For He is our advocate with the Father; and He is the propitiation for our sins." John ii, v. 1, 2. "For His blood cleanseth us from all sin." Ch. i, v. 7. Know, therefore, that "there is none other name under heaven, given among men, whereby we must be saved, but only by the name of the Lord Jesus." Acts iv, v. 12.

But then consider how he invites "all them that labor and are heavy laden with their sins to come unto Him, and He will give them rest." Matt. xi, v. 28. "He will not break the bruised reed, nor quench the smoking flax," Isa. xlii v. 3, compared with Matt. xii, v. 20. The apostle tells us, "that Christ Jesus came into the world to save sinners." I Tim. i, v. 15. And He himself assures us, "that He came to seek and save that which was lost." Luke xix, v. 10, Matt. xvii, v. 11. And

hath promised, that "he that cometh unto Him, He will in no wise cast out." John vi:37.

Doubt not, therefore, but that if you will now sincerely turn to God, He will accept you: and pardon and forgive you your sins.

But know that the condition of these and other the promises of God, made to sinners, is faith and repentance. And great sins (such as yours are) must have great repentance. You must earnestly cry unto God for pardon and remission of your sins, and particularly, that He would "deliver you from blood-guiltiness." Psal. li, v. 14.

And do not mistake the nature of repentance, to be only barely a sorrow for your sins, by reason of the evil and punishment which they have now brought upon you: but your sorrow for your sins must arise from the consideration of your having offended a gracious and merciful God. To which should be added, a sincere resolution and an actual amendment for the future. Indeed such is your unhappy circumstances that you cannot give any actual proof of the amendment of your lives: but remember that God knows the heart.

Time will not permit me to enlarge upon the nature of repentance, and of the many mistakes that men make in that great duty: neither indeed will I so far presume to meddle out of my own profession. You may have those matters better explained to you by some of the ministers of this province, whom you may desire to attend you, and fit you for death; and from them you may expect more full and particular directions: "For the priests' lips shall keep knowledge, and you shall seek the law at their mouths: for they are the messengers of the Lord." Mal. ii, v. 7. "And the ambassadors of Christ; and to them is committed the word (or doctrine) of reconciliation." II Cor., v. 19, 20.

Thus having discharged my duty to you as a Christian, by exhorting you to an unfeigned repentance for your crimes, and faith in Christ, by whose merits alone you must hope for pardon and salvation, I must now do my office as a judge.

The sentence that the law hath appointed to pass upon you

for your offenses, and which this Court doth therefore award, is, that you, the said Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morrison, William Ivers, *alias* Evis, Samuel Booth, William Hewet, John Levit, William Eddy, *alias* Nedy, Alexander Annand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet, *alias* Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly and Robert Boyd, shall go from hence to the place from whence you came, and from thence to the place of execution, where you shall be severally hanged by the neck, till you are severally dead. And the God of infinite mercy be merciful to every one of your souls.

After the condemnation of the above-mentioned persons, Thomas Nichols, Rowland Sharp, Jonathan Clarke and Thomas Gerrard, who were found *Not Guilty*, were discharged.

THE EXECUTIONS.

November 8.

Today, Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, John Thomas, William Morrison, Samuel Booth, William Hewet, William Eddy, *alias* Nedy, Alexander Annand, George Ross, George Dunkin, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet, *alias* Millet, Thomas Price, John Lopez and Zachariah Long, were executed at the White Point near Charlestown, according to their sentence.

THE TRIAL OF MAJOR STEDE BONNET, FOR
PIRACY, CHARLESTON, SOUTH CAROLINA,
NOVEMBER, 1718.

November 10.

The COURT proceeded to arraign Stede Bonnet, *alias* Edwards, *alias* Thomas (who had escaped, but was retaken, November 6), for feloniously and piratically taking the sloop Francis, with her goods, Captain Peter Manwareing, commander; and the sloop Fortune, with her goods, Captain Thomas Read, commander; upon two indictments.

To both which indictments he pleaded *Not Guilty*.

JUDGE TROTT. You are to come upon your trial this day, upon the first indictment, and you have pleaded *Not Guilty*; so that what evidence you have must be ready.

Bonnet. My pleading not guilty is because I may have something to offer in my defense; and therefore I hope none of the Bench will take it amiss.

The COURT proceeded upon his trial on the first indictment, for piratically taking the sloop Francis, Captain Peter Manwareing, commander.

The following *Jurors* were sworn: Timothy Bellamy, foreman; George Ducket, William Sheriff, Benjamin Dennis, Jonathan Main, John Lee, Thomas Bee, James Mazyck, Thomas Lamboll, Henry Beaton, Moses Wilson, Claas Joor.

Mr. Hepworth. May it please your Honors, and you, gentlemen of the jury, the prisoner who now stands arraigned at the bar, has been guilty of many piracies, committed many robberies, ruined many families, and been the occasion of many most cruel and inhuman murders, and all that within a very short time past. Should I here descend into all the particulars, I shall take up too much of your time. You know (all of ye), I believe, after what manner he lately fled from justice. Nay, he was not satisfied with his own escape, but

he must tamper with the king's evidence, to avoid others being prosecuted; and prevailed with the Master Heriot to run away with him, who has been since killed. And I believe the prisoner at the bar cannot, upon reflection, but think himself answerable for that man's death. Nay, some people took particular notice of the prisoner's behavior at the time when Thatch having got command from him, he began to reflect upon his past course of life, and was then filled with such horror, that he was perfectly confounded with shame at the many detestable crimes he had been guilty of, and said he would gladly leave off that way of living, being fully tired, and having got considerably by it: but he should be ashamed ever to see the face of an Englishman: therefore, if he could not get to Spain or Portugal, where he might be undiscovered, he would live and die in the same course of life, viz., in piracy and robbery.

The trial of this man ought to be the more considerable, as he was the great ringleader of them; who has seduced many poor, ignorant men to follow his course of living, and ruined many poor wretches; some of whom lately suffered, who with their last breath expressed a great satisfaction at the prisoner's being apprehended, and charged the ruin of themselves and loss of their lives entirely upon him.

THE EVIDENCE.

Mr. Hepworth. Pell, begin with the first indictment, and when you was first acquainted with Major Bonnet. *Pell.* It was at the bay of Honduras; but Captain Thatch was commander in chief.

The Attorney General. This I observe was before they went to Topsail inlet at North Carolina. *Pell.* Yes, sir; for when we came to Topsail inlet Robert Tucker was chose quartermaster and we went out to go to St. Thomas' for a commission to go a-privateering against the Span-

iards, but the first vessel we saw we took.

Mr. Hepworth. What did you take out of her? *Pell.* We took some provisions.

The Attorney General. Had you no provisions on board the *Revenge*? *Pell.* Yes, sir; some beef, pork, and flour.

Mr. Hepworth. What was the next vessel you took? *Pell.* A sloop belonging to Bermudas. After we had discharged her we took another in which were eight negroes. We took out two, and left three men and two

women, and sent three hands more which made eight, and the next day we gave chase to two ships belonging to Glasgow in Scotland, and in the evening we came up with them, and the other turned tail and we never saw them more after that. And after we had taken some tobacco and other goods, we discharged them. We took, as I remember, two vessels belonging to Bristol, when Captain Read was taken.

The *Attorney General*. What do you know of Captain Manwareing? *Pell*. We were at anchor near Cape James, alias Cape Inlopen, and a little before night we saw a sloop come to anchor at the mouth of the river, and we sent off the dory with five hands, and in a little time they returned with Captain Manwareing; and the next day we haled the sloop alongside the schooner which we had taken before, and hoisted out several hogsheads of molasses and rum, and put them on board the canoe, and put some pitch and tar on board the sloop.

The *Attorney General*. Who gave you orders for the doing of that? *Pell*. I cannot tell, sir.

The *Attorney General*. Did you see Major Bonnet on board Manwareing's sloop? *Pell*. I cannot say he was, neither do I know certainly that he was not.

JUDGE TROTT. Was he not your commander? *Pell*. He was called our captain, to be sure.

The *Clerk*. Have you any questions to ask the king's evidence?

Bonnet. Do not you believe in your conscience, that when we left Topsail inlet it was to go to St. Thomas'? And there were near forty hands, and they

concluded to a marooning? *Pell*. I did believe it was so till after we were out.

JUDGE TROTT. That was what they accused you for on their trials; that you deceived them, under a pretense of going to St. Thomas'.

Bonnet. I am sorry that they should take the opportunity of my absence to accuse me of that which I was free from.

Mr. Dean. If there were forty hands on board, it cannot be thought that he had power to command them.

JUDGE TROTT. But he was commander in chief among them, and that after they went a-pirating; was it not so, boatswain? *Pell*. He went by that name; but the quartermaster had more power than he.

JUDGE TROTT. What do you mean by your evasion? Was he commander in chief, or was he not? *Pell*. He was.

JUDGE TROTT. Then who had the greatest power?

The *Attorney General*. Do you know if he received his share of Captain Manwareing's goods? Or did any receive it for him? *Pell*. Sir, it was the quartermaster took care of that.

JUDGE TROTT. He was commander in chief, and therefore I suppose he had a double share? *Pell*. I did never inquire whether he had or not.

JUDGE TROTT. Boatswain, tell the truth; had he his share, or had he not? *Pell*. He had it.

Bonnet. Boatswain, did you ever hear me force any man to go? *Pell*. No, Major, I cannot say I did.

Bonnet. Do you not remember that when we left Topsail inlet and they began to quarrel about provision that I said I

would leave the sloop? *Pell.* I do remember you said so.

JUDGE TROTT. But if you did take some for provision, would no less than thirteen vessels satisfy you? *Bonnet.* It was contrary to my inclination.

Mr. Hepworth. We proceed to call another evidence, Captain Peter Manwareing.

Mr. Hepworth. Captain Manwareing, look upon the prisoner at the bar; do you know him? *Manwareing.* I know him very well.

Mr. Hepworth. Give the Court an account of your being taken by him. *Manwareing.* I arrived at Cape James, alias Cape Inlopen, the 31st of July, and after being at an anchor some time we saw a dory coming, as I said before. So I was ordered on board the *Revenge*.

JUDGE TROTT. And before whom was you brought? *Manwareing.* Before the man at the bar, Captain Thomas he was called then, and so I gave him my papers, and it being night, he said but little more that night. Next morning they hauled the sloop alongside the schooner and hoisted out the rum and molasses out of the sloop and put on board the schooner, and the first of August we sailed in company to Cape Fear. But indeed the gentleman was very civil to me.

The Attorney General. Did you ever hear him give orders to take out any goods? *Manwareing.* He was on board the sloop himself when it was done.

Mr. Hepworth. Do you remember any particular goods taken out? *Manwareing.* Yes, sir.

The Clerk. Will you ask the king's evidence any questions?

Bonnet. I beg leave to ask

whether you ever saw me share among the rest? *Manwareing.* You was in the round house and a bundle and some pieces was brought and I saw you take it, and give it the negro boy to put into the chest.

Bonnet. There were several that I kept their shares for, but it was not mine. *Manwareing.* It was put away by your order.

Bonnet. Did you ever hear me order any thing out of the sloop? *Manwareing.* Major Bonnet, I am sorry you should ask me that question, for you know you did; which was my all that I had in the world. So that I do not know but my wife and children are now perishing for want of bread in New England. Had it been only myself, I had not mattered it so much, but my poor family grieves me.

The Clerk. Will you ask any more questions. *Bonnet.* No, sir.

Mr. Hepworth. We will call another evidence, James Killing.

Mr. Hepworth. Give the Court an account of your being taken and what goods were taken out of you.

The witness gave the same evidence as in the former trials, and added that Major Bonnet ordered him to go and show which was the rum and which was the molasses.

Mr. Hepworth. Do you remember in particular what goods were taken out? *Killing.* Yes, sir.

Mr. Hepworth. Were the twenty-one hogsheds of molasses, and the rum taken out? *Killing.* Yes, sir.

The Attorney General. And all by Major Bonnet's order? *Killing.* Major Bonnet gave orders for it to be done.

JUDGE TROTT. What need had you of so much molasses? *Bonnet*. I did not carry it away, and it was contrary to my inclination.

JUDGE TROTT. You gave orders for it to be done, and yet it was contrary to your inclinations.

The *Clerk*. Will you ask the king's evidence any questions? *Bonnet*. No, sir.

Mr. Hepworth. We will call another evidence, Captain Thomas Read.

Mr. Hepworth. Please to give the Court an account of Captain Manwareing's being taken. *Read*. After we came to Cape James we saw a sloop come to an anchor and Major Bonnet ordered the dory with five hands to go off, and in about half an hour they came on board with Captain Manwareing.

The *Attorney General*. Was you on board the *Revenge* when the dory was sent off? *Read*. Yes, sir.

The *Attorney General*. And Major Bonnet gave orders to take out those goods? *Read*. Yes, sir.

JUDGE TROTT. Was he on board himself? *Read*. Yes; and ordered the several goods to be taken out.

The *Attorney General*. Do you know if the Major received his share? *Read*. The captain was in the round house when they shared and they brought in several pieces of cloth and a bag of money.

Mr. Hepworth. Who brought that to him? *Read*. I do not know which of the men.

The *Attorney General*. And did the captain receive his share? *Read*. He ordered it to be put in the chest by the boy.

The *Clerk*. Will you ask any questions? *Bonnet*. No, sir.

JUDGE TROTT. You now stand on your defense; what have you to say, I shall be ready to hear. *Bonnet*. May it please your honors, there is a young man come from North Carolina that will say something in my defense.

JUDGE TROTT. James King, what do you know of the prisoner at the bar? *King*. When Major Bonnet took out his clearance at North Carolina, the sloop was cleared for St. Thomas' for a commission to go against the Spaniards a-privateering.

Mr. Dean. Do you certainly know it was so? *King*. It was reported to be so by the governor.

The *Attorney General*. Did you hear the governor declare this? *King*. No; but Colonel Brice's son told me so.

JUDGE TROTT. Colonel Brice lives fifty miles in the country, how did he come to inform you of this? *King*. He came down out of the country.

JUDGE TROTT. If this be all the evidence you have, I do not see this will be of much use to you, but if you have anything further to say, I shall be ready to hear you.

Bonnet. I should be glad to go through both indictments at once.

JUDGE TROTT. We shall go through but one indictment now, therefore you must prepare to speak to that singly.

Bonnet. May it please your Honors, and the rest of the gentlemen, though I must confess myself a sinner, and the

greatest of sinners, yet I am not guilty of what I am charged with. As for what the boatswain says, relating to several vessels, I am altogether free; for I never gave my consent to any such actions: for I often told them, if they did not leave off committing such robberies, I would leave the sloop; and desired them to put me on shore. And as for taking Captain Manwareing, I assure your Honors it was contrary to my inclination. And when I cleared my vessel at North Carolina, it was for St. Thomas'; and I had no other end or design in view but to go there for a commission. But when we came to sea, and saw a vessel, the quarter-master, and some of the rest, held a consultation to take it: but I opposed it, and told them again I would leave the sloop, and let them go where they pleased. For, as the young man said, Colonel Brice's son can testify that I had clearance for St. Thomas'.

JUDGE TROTT. Was Colonel Brice's son there when you cleared for St. Thomas'? *Bonnet.* Yes, and Colonel Brice's son knew I was designed for St. Thomas'.

JUDGE TROTT. But, pray, what business had you at St. Thomas'? Surely after you had contracted so much guilt upon your conscience by your former piracies and robberies, you might have been contented to have lived a retired life in North Carolina, reflected on your former wicked course of living, and repented of the same, and not engaged in

new actions. *Bonnet.* I never took a vessel but with Captain Thatch.

JUDGE TROTT. Did you not take Captain Manwareing's sloop? *Bonnet.* It was contrary to my inclinations, and I told them several times if they would not leave off that course of life I would leave the sloop; and when Captain Manwareing was taken, I was asleep.

JUDGE TROTT. How came you to order the dory to be sent off with five hands to take him? And Captain Read swears it was by your order.

The *Attorney General.* May it please your Honors, and the gentlemen of the jury, the prisoner at the bar hath pleaded not guilty to the indictment; but the boatswain, though he seems to bear a very great affection to him, yet tells you that he was commander in chief among them at the time when Captain Manwareing was taken. Captain Manwareing tells you, when he was brought on board the *Revenge*, he was brought before him, and no other, and that he delivered his papers to

him; and he saw his share brought to him in the round-house, and put into the chest.

Then Captain Manwareing's mate says Major Bonnet was on board the sloop, and ordered him to show which was the molasses, and which was the rum. And then Captain Read says Major Bonnet was commander in chief, and that he ordered the dory to be sent off with five hands to take Captain Manwareing. Indeed, the prisoner pleads he was under constraint from his men, and that it was contrary to his inclinations; but I think it not common for one that is forced to have such command. And as for what James King says in behalf of the prisoner, that he had his clearance for St. Thomas', in what he was accused of before, that he deceived his men with a notion of his going there for a commission.

JUDGE TROTT. Gentlemen of the jury, the prisoner at the bar stands indicted for felony and piracy, committed on a sloop belonging to Captain Peter Manwareing, for breaking and boarding the said sloop. The first evidence, Ingatius Pell, through the great affection he seemed to have for him, was unwilling to speak the truth: yet he cannot deny but he was at the taking of thirteen vessels, and particularly Captain Manwareing's, and that he had his share. Then comes Captain Manwareing, and he says Major Bonnet was commander in chief; and that he was brought before him, and he gave his papers to him, and by his order it was that the goods were taken out. And then Killing, the mate, he says Bonnet was on board when the goods were taken out. Then comes Captain Read, and he says the dory was sent off by Major Bonnet's order; and that his share was brought into the round-house to him. As for his pretence, that his men forced him against his will, it appears by the evidence he did not act like a person under constraint. And in the former trials, several of you remember, that his men generally said, that he deceived them under pretence of his going to St. Thomas'; and that he forced them. So that I think the evidence have proved the fact upon him: but I shall leave this to your consideration.

The *Jury*, after they had considered of their verdict, returned, and found the abovesaid Stede Bonnet, *alias* Edwards, *alias* Thomas, *Guilty*.

November 11.

The COURT proceeded on the trial of Stede Bonnet, *alias* Edwards, *alias* Thomas, upon the second indictment for feloniously and piratically taking the sloop *Fortune*, with her goods, Captain Read, commander.

To which indictment upon his arraignment he pleaded *Not Guilty*; but now desired leave to withdraw his plea, and pleaded *Guilty*.

THE SENTENCE.

November 12.

Stede Bonnet, *alias* Edwards, *alias* Thomas, who stood convicted of piracies, being brought to the bar, and being asked what he had to say why judgment of death should not pass upon him, and he having nothing to allege in arrest of judgment, then proclamation for silence was made, while the Judge of the Court of Vice Admiralty pronounced sentence of death upon the prisoner.

JUDGE TROTT. Major Stede Bonnet, you stand here convicted upon two indictments of piracy: one by the verdict of the jury, and the other by your own confession.

Although you were indicted but for two facts, yet you know at your trial it was fully proved, even by an unwilling witness, that you piratically took and rifled no less than thirteen vessels, since you sailed from North Carolina.

So that you might have been indicted and convicted of eleven more acts of piracy, since you took the benefit of the king's Act of Grace, and pretended to leave off that wicked course of life.

Not to mention the many acts of piracy you committed before; for which, if your pardon from man was never so authentic, yet you must expect to answer for them before God.

You know that the crimes you have committed are evil in

themselves, and contrary to the light and law of nature, as well as the law of God, by which you are commanded that "you should not steal." Exod. xx:15. And the apostle St. Paul expressly affirms, that "thieves shall not inherit the kingdom of God." I Cor. vi:10.

But to theft you have added greater sin, which is murder. How many you have killed of those that resisted you in the committing of your former piracies, I know not: but this we all know, that besides the wounded, you killed no less than eighteen persons out of those that were sent by lawful authority to suppress you, and to put a stop to those rapines that you daily acted.

And however you may fancy that that was killing men fairly in open fight, yet this know, that the power of the sword not being committed into your hands by any lawful authority, you were not empowered to use any force, or to fight any one; and therefore those persons that fell in that action, in doing their duty to their king and country, were murdered, and their blood now cries out for vengeance and justice against you: for it is the voice of nature, confirmed by the law of God, that "whoso sheddeth man's blood, by man shall his blood be shed." Gen ix:6.

And consider that death is not the only punishment due to murderers; for they are threatened to have "their part in the lake which burneth with fire and brimstone, which is the second death." Rev. xxi:8. See Chap. xxii:15. Words which carry that terror with them, that considering your circumstances and your guilt, surely the sound of them must make you tremble; "for who can dwell with everlasting burnings?" Chap xxxiii:14.

As the testimony of your conscience must convince you of the great and many evils you have committed, by which you have highly offended God, and provoked most justly His wrath and indignation against you, so I suppose I need not tell you, that the only way of obtaining pardon and remission of your sins from God, is by a true and unfeigned

repentance and faith in Christ, by whose meritorious death and passion, you can only hope for salvation.

You being a gentleman that have had the advantage of a liberal education, and being generally esteemed a man of letters, I believe it will be needless for me to explain to you the nature of repentance and faith in Christ, they being so fully and so often mentioned in the Scriptures, that you cannot but know them. And, therefore, perhaps, for that reason it might be thought by some improper for me to have said so much to you, as I have already upon this occasion; neither should I have done it, but that considering the course of your life and actions, I have just reason to fear, that the principles of religion that had been instilled into you by your education, have been at least corrupted, if not entirely defaced, by the scepticism and infidelity of this wicked age; and that what time you allowed for study, was rather applied to the polite literature, and the vain philosophy of the times, than a serious search after the law and will of God, as revealed to us in the Holy Scriptures: for "had your delight been in the law of the Lord, and you had meditated therein day and night," Psal. i:2, you would then have found that God's "word was a lamp unto your feet, and a light to your path," Psal. cxix:105, and that you will account all other knowledge but loss, in comparison of "the excellency of the knowledge of Christ Jesus," Phil. iii:8, "who to them that are called is the power of God, and the wisdom of God," I Cor. i:24, "even the hidden wisdom which God ordained before the world." Chap. ii:7.

You would then have esteemed the Scriptures as the great charter of heaven, and which delivered to us not only the most perfect laws and rules of life, but also discovered to us those acts of pardon from God, wherein we have offended those righteous laws: for in them only is to be found the great mystery of fallen man's "redemption, which the angels desire to look into." I Peter i:12.

And they would have taught you that sin is the debasing of human nature, as being a deviation from that purity, recti-

tude, and holiness, in which God created us; and that virtue and religion, and walking by the laws of God, were altogether preferable to the ways of sin and Satan; for that the "ways of virtue are ways of pleasantness, and all her paths are peace." Prov. iii:17.

But what you could not learn from God's word, by reason of your carelessly, or but superficially considering the same, I hope the course of His providence, and the present afflictions that He hath laid upon you, hath now convinced you of the same: for however in your seeming prosperity you might make a mock at your sins, Prov. iii:17, yet now that you see God's hand hath reached you, and brought you to public justice, I hope your present unhappy circumstances hath made you seriously reflect upon your past actions and course of life; and that you are now sensible of the greatness of your sins, and that you find the burden of them is intolerable.

And that therefore being thus, "laboring, and heavy laden with sin," Matt. xi:28, you will esteem that as the most valuable knowledge, which can show you how you can be reconciled to that supreme God whom you have so highly offended; and which can reveal to you Him who is not only the powerful "advocate with the Father for you," I John ii:1, but also who hath paid that debt that is due for your sins by His own death upon the cross for you, and thereby made full satisfaction to the justice of God. And this is to be found nowhere but in God's word, which discovers to us that "Lamb of God, which taketh away the sins of the world," John i:29, which is Christ the Son of God: for this know, and be assured, that "there is none other name under heaven given among men, whereby we must be saved," Acts iv:12, but only by the name of the Lord Jesus.

But then consider how He invites all sinners to come unto Him, and "that He will give them rest," Matt. xi:28, for He assures us, "that He came to seek and to save that which was lost"; Luke xix:10; Matt. xviii:11, and hath promised that "he that cometh unto Him, He will in no wise cast out." John vi:37.

So that if now you will sincerely turn to Him, though late, even at the "eleventh hour," Matt. xx:6, 9. He will receive you.

But surely I need not tell you, that the terms of His mercy is faith and repentance.

And do not mistake the nature of repentance to be only a bare sorrow for your sins, arising from the consideration of the evil and punishment they have now brought upon you; but your sorrow must arise from the consideration of your having offended a gracious and merciful God.

But I shall not pretend to give you any particular directions as to the nature of repentance: I consider that I speak to a person whose offenses have proceeded not so much from his not knowing, as his slighting and neglecting his duty. Neither is it proper for me to give advice out of the way of my own profession.

You may have that better delivered to you by those who have made divinity their particular study; and who by their knowledge, as well as their office, as being the ambassadors of Christ, II Cor., v. 20, are best qualified to give you instructions therein.

I only heartily wish that what, in compassion to your soul, I have now said to you upon this sad and solemn occasion, by exhorting you in general to faith and repentance, may have that due effect upon you, that thereby you may become a true penitent.

And, therefore, having now discharged my duty to you as a Christian, by giving you the best counsel I can with respect to the salvation of your soul, I must now do my duty as a judge.

The sentence that the law hath appointed to pass upon you for your offenses, and which this Court doth therefore award, is, that you, the said Stede Bonnet, shall go from hence to the place from whence you came, and from thence to the place of execution, where you shall be hanged by the neck till you

are dead. And the God of infinite mercy be merciful to your soul.

THE EXECUTION.

December 10.

On this day Major Stede Bonnet was executed "at the White Point, near Charlestown, according to the above sentence."

THE TRIAL OF JOHN AND SARAH ROBINSON, FOR KIDNAPING, BOSTON, MASSA- CHUSETTS, 1837.

THE NARRATIVE.

In the year 1836 Mr. Henry Bright, a native of Massachusetts, and his wife, who was born in Connecticut, returned from Alabama, where they had lived for a number of years. They had selected Cambridge as their permanent home. They had owned slaves in the South and with them came a negro child whose mother had been owned by them but had died a short time before. They had been settled in Cambridge only a few months when the child suddenly disappeared. Mr. Bright made a search and soon learned that it had been taken away by Sarah Robinson, and on demanding its return found that it was in the hands of a number of abolitionists. To a prominent representative of that party he declared that the child was not a slave but was treated most kindly by Mrs. Bright, who was much attached to it, and who desired to educate it and that they had no thought of going back to the South or sending the child there. He offered to give a bond to secure its not being removed from the state, adding that he and his wife were as much opposed to slavery as any one in the North. Then he went to court and had himself appointed guardian of the child, and with an officer of the court made a demand on Sarah and her husband John (who were both negroes) to produce the girl. They refused, whereupon he had them indicted for kidnaping. On the trial the judge charged the jury very strongly regarding the high handed conduct of the prisoners, and the jury convicted them and they were sentenced to a fine and imprisonment.

THE TRIAL.¹

In the Municipal Court of the City of Boston, December, 1837.

HON. PETER O. THACHER,² Judge.

December 19.

The grand jury had returned an indictment against John Robinson and Sarah Sophia Robinson, his wife. The indictment had three counts. The first charged that the prisoners on the 17th September, 1837, at Cambridge, seized and confined and imprisoned a certain female child of tender years, to wit, of five years of age, and inveigled and kidnaped said child, with intent to cause her to be secretly confined and imprisoned in this state against her will; and that they, after seizing the child, took, confined, held, carried and brought her from Cambridge into Boston. The second count charged that they seized the child with intent to hold her to service against her will. The third count charged that the prisoners seized the child with the intent that she should be carried out of the state against her will.

Both of the Prisoners pleaded *Not Guilty*.

Mr. Parker,³ for the Commonwealth.

Benjamin R. Curtis,⁴ for the Prisoners.

THE WITNESSES FOR THE COMMONWEALTH.

Henry Bright. Reside in Cambridge since May last; two years ago I lived in Mobile; had there a female slave, a very excellent woman, who died, leaving a fe-

male infant, whom my wife has since taken care of as her own. This child was removed to Cambridge with my family, and was a member of it in September

¹ *Bibliography*. *Thacher's Criminal Cases, see 2 Am. St. Tr. 858.

² See 2 Am. St. Tr. 859.

³ See 3 Am. St. Tr. 371.

⁴ CURTIS, BENJAMIN ROBBINS. (1809-1874.) Born Watertown, Mass. Practiced law in Boston and served two terms in the state legislature, 1834-1850. Associate Justice Supreme Court of the United States, 1851-1857. Counsel for President Andrew Johnson on his Impeachment. Author and Editor of Circuit Court and United States Supreme Court Decisions.

last. On the 17th of that month she was missing, and I have not since seen her; made inquiries and learnt she had been taken to Boston, in a carriage, by Mrs. Robinson. Went to some leading abolitionists in Boston, as I supposed the persons who had taken the child must have done so under a mistaken notion; called on Samuel E. Sewall, Esq., with my wife. We stated to him the facts respecting the child; that her mother died with us, and that we had brought the child here to educate; that we had left Mobile with a view to reside here permanently; that the child was very much attached to Mrs. Bright, and she to the child; that we supposed she had been taken from us by the abolitionists, under the impression that she was a slave, and that we were ready to give them entire satisfaction that such was not the fact; that we were willing to give security to any amount that she should never be made a slave, and that we were only actuated by a desire for the good of the child. Mr. Sewall advised us to draw up a paper, setting forth the last-mentioned facts. At my request he drew up one; I signed it, and left it with him; next morning I called on him again. He told me he had seen Mr. Snowden, the colored clergyman; that the latter could probably find the child, but, as the colored people were jealous of those who came from the South, he should like to have a bond from me that the child should never be carried into a slaveholding state. At my suggestion, he drew a bond, the penalty of which was five hundred dollars. I called the next morn-

ing. Did not see Mr. Sewall; but the young man in the office said the colored people would not give up the child; went to Mr. Ellis Gray Loring's office, knowing that he was an influential abolitionist. He said Mr. Sewall had spoken to him on the subject, and that he was satisfied that the child ought to be given up. He said some colored people had called on him; that he would send for them, and let me know the result; called the next morning on Mr. Loring. After some private conversation between Mr. Loring, Mr. Sewall, and a Mr. Hanson, the latter expressed a desire that the child should be given up, and directed us to call on Mrs. Robinson. Messrs. Sewall and Loring gave me a letter to Mrs. Robinson, the substance of which was, that they thought the child ought to be given up, as they did not suppose she would ever be made a slave; called on Mrs. Robinson with my wife. Her husband was present a part of the time; gave her the letter and stated to her the particulars respecting the child; our views respecting it and that we held it as a free child; she said that she took the child from Cambridge; that she had requested a Mr. Lewis, an aged colored man, at Cambridge, to bring the child to Boston, but he refused to do so; but that he was at my house for a trunk the morning the child left and sent the child into the street; that she then took the child and brought it to Boston; that she did not take it on her own account, but at the request of two white ladies; that she did not keep the child an hour, but delivered it up to the white ladies;

that she was perfectly willing to restore the child, if they were; asked who the ladies were. She replied she did not feel at liberty to tell, as they had requested her not to tell. We requested her to call on them, and get permission to deliver the child to us. She said she would go in the course of the day, and that probably those ladies would bring the child out to my house in the afternoon, in their carriage. If they did not, she would tell us the next day the result of her interview with them.

Next morning we called again on Mrs. Robinson. She said she had seen the ladies and directed us to call on the two Misses Parker, in Hayward place. We called on them. They expressed surprise that Mrs. Robinson had used their names, in the manner that led us to suppose they knew of the child before it was taken from Cambridge. They said they knew nothing of the little girl till the evening before, when Mrs. Robinson told them of her; that Mrs. Robinson had called on them that morning and requested permission to bring the child to their house; that they gave her permission; that they requested Mrs. Robinson to ask us to call on them, as they should like to talk with us. We stated to them the facts respecting the child. They said immediately, that the child should be restored and one of them went with me to Mrs. Robinson. We found Mr. Snowden at Mrs. Robinson's house. Mr. Robinson came in soon. Miss Parker advised them to give up the child. Mr. Robinson said he was perfectly willing to do what those benevolent ladies advised.

Mr. Snowden remarked, after some conversation, that some of the colored people thought the bond was not sufficient; that he had nothing to do with it, but he thought that if the bond was made larger, it would be satisfactory. I answered that I would make the penalty of the bond as large as was deemed reasonable and proper, and that my only desire was the good of the child. Mrs. Robinson still hesitated about giving up the child. She said some other persons had taken an interest in the child, and she did not like to give it up without consulting them; that if we would call at Mr. Ellis Gray Loring's office in the afternoon, we should have a final answer, and that the child would probably be there. We called there and found Mr. and Mrs. Robinson, with several other colored persons there, with Mr. Loring. The child was not there. Mrs. Robinson said, that, notwithstanding the white people wished them to give up the child, the colored people thought differently and were determined not to give her up unless there was some law to compel them. Something was said in regard to treatment of the child while in our possession. We answered them she was treated with uncommon kindness, and if they would inquire of our neighbors or domestics, they would be satisfied of this fact. I also said that I was a native of Massachusetts and my wife of Connecticut and that our sympathies with northern people were as strong as theirs. Till this time I had pursued the business with patience, supposing their motives were good. I now became excited.

Next applied to Charles G. Loring, Esq., for counsel. By his advice I took out letters of guardianship in Middlesex county. Before this I think Mr. Loring sent for these parties. Afterwards I called on the defendants with an officer and after reading to them the letters of guardianship, I demanded of them the child. At first Mr. Robinson said he presumed we could have the satisfaction we wished. When his wife came in she said she would not give up the child, but would stand a suit, or words to that effect. We had some conversation with a colored woman present, who said she believed the child was out of town. I then applied to Chief Justice Shaw for a writ of habeas corpus but got no relief there. I then brought a civil action as guardian for the child, against the defendants. Damages were laid at one thousand dollars and property was attached. This did not have the effect to produce the child, as I supposed it would. I then complained to the grand jury.

Samuel F. Sewall. I signed a note with Mr. Ellis Gray Loring, directed, I think, to Mrs. Robinson. In the note we stated that we did not think Mr. Bright had any intention of carrying the child into slavery. There was a meeting afterwards at my office, at which there were several colored people; think Mrs. Robinson was there.

Cross-examined. Have known Mr. Robinson for a year or two; never heard anything against him, but my acquaintance with him is slight.

Ellis Gray Loring. Defendants, with Mr. Bright and wife, were at my office with others to

consult about this affair. There was much discussion among them about slavery. The colored people expressed an entire distrust of Mr. and Mrs. Bright's sincerity, as they were slaveholders. There was much talk as to whether the child ought to be restored. The colored people expressed themselves generally that they could not restore the child if they would. Some of the colored people said the child was ill-used at Mr. Bright's; that there were the marks of a bruise on its head, and that her hair had not, from appearance, been combed for a long time.

Cross-examined. Have no doubt that I then urged the colored people to give up the child. They assigned two reasons for not doing it:—they were not sure that they could restore the child—and another suggestion was that the slaveholders with their smooth tongues, could deceive Mr. Sewall and myself, but could not deceive the colored people. The colored people were very much excited, and so were Mr. and Mrs. Bright.

I was consulted by Robinson and wife, as counsel. Previously, another colored person had told me that there was a child at Cambridge who was held by a slaveholder, and who would soon be carried into slavery; was told that the child was permitted to go out of doors; told the person that if the child was not restrained of her liberty, I doubted if any one could conscientiously take the oath on which to found a writ of habeas corpus. They asked what remedy there was. I told them that it was for the child to take its own liberty; that by a late decision in this state, this

was the proper course; was asked by these defendants, if they assisted the child to escape, whether they would be liable; told them they might lawfully receive the child, but had best return its clothing; think these defendants were some of the people to whom I gave this advice. This was before the child left Mr. Bright; was told that the child was seven or eight years old. If I had known its real age (five years) I should

have hesitated at giving the advice I did give; never supposed Mr. and Mrs. Robinson intended any injury to the child.

William Snowden. Saw Mr. Bright at Robinson's house; told Mr. Bright that the colored people thought the bond for \$500 too low; that the child might be sold for that sum, and Mr. Bright would not be the loser if he forfeited the bond. Have known defendants several years. Their characters stand high.

The following paper, in the hand writing of Mr. Sewall, was then read by the *County Attorney*:

Boston, Sept. 18, 1837.

To whom it may concern.

A colored child, named Elizabeth, aged about five years, having been taken from me on suspicion of being a slave, I think it proper to declare that I do not claim her as a slave—that when she was brought here it was with the intention of having her free and so brought up—and though I intend to go to the South and spend this winter, I have no design of taking her back. Mrs. Bright is attached to the child and wishes to bring her up to be a useful woman.

I hereby promise never to claim the said Elizabeth as a slave, or to carry or send her to the slaveholding states as one.

It may be proper to add, that Mrs. Bright is an immediate abolitionist.

Henry Bright.

On the back of this instrument was indorsed the following:

Boston, Sept. 19, 1837.

I further agree and promise Samuel E. Sewall to pay him the sum of \$500 on demand in case the said Elizabeth is carried into any one of the slaveholding states by me or through my agency or permission, in consideration of his exerting himself to find and restore the said Elizabeth to my protection. The above sum, if forfeited, I agree that said Sewall may apply for the anti-slavery cause.

Henry Bright.

Boston, Sept. 19, 1837.

For the consideration aforesaid we guaranty the performance of the above contract.

N. F. Cunningham & Co.

Mary S. Parker. Mrs. Robinson applied to me to procure a place for a child whom she supposed to be a slave; told her I would procure a place; did procure one and informed her of the fact; it was understood that she was to send the child to our house, at No. 5 Hayward place. The child was not sent to us; next saw Mrs. Robinson at her

house in consequence of an interview with Mr. Bright; assured Mrs. Robinson that I felt a degree of confidence that the child would not be carried into slavery if returned to Mr. Bright.

Cross-examined. Have known Mrs. Robinson several years. Her character is good.

Eliza Parker confirmed the testimony of her sister.

THE WITNESSES FOR THE DEFENSE.

Mr. Parker admitted that the character of the defendants stood high in the community. *Mr. Curtis* admitted that Mrs. Robinson took the child out of the street in Cambridge and with her husband and children brought her to Boston in a carriage on the Sunday forenoon in question.

Mary Ann Whiting. Am a sister of Mrs. Robinson. The child remained at Robinson's till Monday morning, when, after Mr. and Mrs. Robinson had gone to their clothes store in Brattle street, some five or six colored people came to Robinson's house and rang the bell. I ran up from the kitchen and the child followed me. Upon opening the door one of the men asked me if there was a slave child in the house. I said there was. They then asked if the child by my side was the one and I said it was. The colored people then put on its bonnet and took her off. I tried to hold the child back but all the others laid hold

of the child and pulled her away. Have not seen the child since, but have heard that she was in Salem and attended a school there; all the colored people were entire strangers to me.

Stephen Burt. I was formerly Mr. Bright's slave but was emancipated by him on the day of the death of the child's mother. She gave her to a colored fellow servant by the name of Eleanor.

Mr. Parker stated he was prepared to prove by ten witnesses the affectionate manner in which the child was treated in Mr. Bright's family; the counsel for the defense said that he did not mean to question that fact.

Mr. Parker stated that Messrs. Sewall and Loring, Dr. Wainwright, Mr. Curtis and himself had urged the defendants to restore the child but that they had uniformly declared that the child was removed from their control, and that they did not know where she was.

THACHER, J. (to the Jury). By the Revised Statutes of this commonwealth (c. 125, s. 20 and 21), it is declared that no person shall, without lawful authority, forcibly or secretly confine, or imprison any other person, within

this state, against his will, or forcibly carry or send such person out of this state, or forcibly seize and confine, or inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this state against his will, or to cause such person to be sent out of this state against his will, or to be sold as a slave, or in any way held to service against his will. Every such offense may be tried either in the county in which the same may have been committed, or in any county in or to which the person shall be carried; and upon the trial, the consent of the person so taken, shall not be a defense, unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress, or by threats.

Elizabeth Bright, the person alleged to have been seized and confined, was born a slave in the state of Alabama. Her mother belonged to Henry Bright, of Mobile, and since her death, the wife of Mr. Bright has taken the special care of the child, as her own, and she was living in the family of Mr. Bright, at Cambridge, on the day of the abduction complained of. Having been brought into this state by her master, she ceased to be a slave, and gained her freedom to all intents; it being established law, that the moment that the master carries his slave into a country where domestic slavery is not permitted, he becomes free. This child was as free, in respect of legal rights, as the child of any inhabitant of the state, and was entitled to the protection of the law. This right has been most deliberately settled by the supreme judicial court of this commonwealth. They have solemnly decided that a citizen of any one of the United States, where negro slavery is established by law, who comes into this state for any temporary purpose of business or pleasure, staying some time, but not acquiring a domicile here, who brings a slave with him, as a personal attendant, cannot restrain such slave of his liberty during his continuance here, nor convey him out of this state on his return, against his consent. That tribunal have also

decided, that if a child who was born a slave in, is about to be carried out of the state, and subjected to a state of servitude, they will grant a writ of habeas corpus to bring such minor before them, and require surety in its favor, or even put it under the custody of a new guardian. They have gone to the utmost verge of law and right, to withhold such a person from slavery. I shall not enter into the grounds of the decision, nor attempt to scan it according to the rules of the constitution, but shall consider it as the law of the land, and binding on this court. Hence you see, that Elizabeth Bright, the child whom the defendants are charged to have abducted by force and against her will, was free at the time, and under the highest legal protection, and that she could not be unlawfully imprisoned within the state, nor carried out of it against her will, either by Mr. Bright, who once claimed her as his slave. or by the defendants at the bar.

It has been proved by the evidence in this case, and in fact, it is admitted and avowed in argument, that on the 17th day of September last, the defendants went to Cambridge, and there, without the knowledge or consent of Mr. Bright, and without any legal authority, took this child and brought her to their house in this city, on the same day; and you are to judge, from the evidence, whether it does not appear, that they, together with certain other persons, whose names are not known, have secreted and kept this child confined from her natural friends, from that day to the present. The nurture and education of this child had, by a high natural and moral obligation, devolved on Mr. Henry Bright and his wife, and they had assumed and were exercising the responsible trust; nor does it appear that they had treated it other than with kindness, or that they were disposed to do so. If the child had been treated with inhumanity, any citizen might have complained in its behalf; and the voice of the law would have responded to the claim of humanity, and granted instant protection and redress. But it is in evidence, that the child

was happy and contented with its natural protectors, on the day of its abduction. The measures taken by Mr. Bright to recover the child, prove that he acted with humanity, and that he felt a deep interest in its welfare. His statement is confirmed in every material fact, by the testimony of Samuel E. Sewall, and E. G. Loring, Esqs., Rev. Mr. Snowden, and the Misses Parker.

Mr. Loring states some additional facts, from which it would seem, that a plan was deliberately laid by the defendants and others to get this child into their possession; that they deceived even him as to the age of the child. The advice which Mr. Loring gave to them, is no apology nor justification in law for the abduction.

It appears, then, that they got the child into their possession, and that on the next day persons came to the house in their absence and took it away. Now it does not appear that the defendants expressed surprise at this fact, or were dissatisfied with it, or that they took any pains to recover the child. And in no subsequent interview with Mr. Bright, did they pretend, or have they ever pretended, that they were ignorant where it was. Hence, if this abduction was the effect of a conspiracy, and the defendants were conspirators or accomplices in the act, they are accountable for the offense. If they took this child and carried it away and have kept it in secret, they are responsible for it in law. If they did the act deliberately, the legal presumption is that they intended to confine it against its will. Having inveigled the child into their possession, they are bound to account for the act, and to show that it was for an honest and lawful purpose. For the act of seizing a person and detaining him is *prima facie*, unlawful, and the burden is on the party accused and proved to have taken and detained him, to satisfy the jury that he had right so to do, and that the person was not confined against his will.

To show that the defendants were free from an evil intent, and that they acted on the high principles of humanity and benevolence, witnesses have been called to prove

that the defendants have borne a good character. Now, gentlemen, if the deed is satisfactorily proved to have been committed by these defendants, their former good character is not to avail for their acquittal, although it may speak much in mitigation of their punishment, especially if, by hastening to restore the child, they should acknowledge their fault. For it would be contrary to all the maxims of law, that because a man has once borne a good character, he should not be answerable for a deliberate offense. Besides, it should be recollected that all evil examples, especially the worst, proceed from the good, and are for that cause, so much the more dangerous.

You are to judge of the act done, and of the intent of the actors. It is admitted that the defendants carried off the child on the 7th day September last, from its natural protectors—they have kept it in secret confinement to this day—and they have refused, in this court, to account for it to you, their legal and equitable judges, or to produce it and place it under the protection of the law. Is it alive or dead—is it in sickness or health—is it in the hands of the humane—or exposed to neglect, to want, and in the road to moral ruin and to an early grave I am free to instruct you, that I consider that the defendants are bound in law to produce this child, and to place it under the protection of the law. Hitherto they have set their own will above the law. It is for you to say, on your responsibility whether they are guilty or innocent of this offense.

It is your province to decide from the act done, and the manner in which it was done, with what intent this child was abducted by the defendants; whether to confine it secretly in this state, or to subject it to service, or to send it out of the state, against her will. You may be of opinion, that it was done innocently and without an unlawful intent in which case you will acquit the defendants. From the fact, from the time the child was taken, to the present moment, it has been kept in secret confinement, away from its natural friends and protectors, and without their knowl-

edge, and that the defendants now refuse to put it under the protection of the law, you must judge of the act done, and of the intent of the actors at the time. You are constituted the judges both of the law and fact; and you must decide whether the abduction of the child and its subsequent secret detention were or not a violation of the law on which the indictment was found.

THE VERDICT AND SENTENCE.

The *Jury* returned a verdict that both prisoners were *Guilty* on the first and second counts, and *Not Guilty* on the other.

JUDGE THACHER sentenced them to imprisonment for four months in the common jail, and to pay a fine of two hundred dollars and costs.⁵

⁵ An appeal was taken to the supreme court, but upon request of Henry Bright, the prosecutor, and upon payment of costs—the child having been returned to Bright, and the expenses of the civil suit having been large—the commonwealth's attorney entered a *nolle prosequi*.

THE TRIAL OF JOHN R. KELLY, FOR THE MURDER OF DAVID W. OXFORD, DAWSON, GEORGIA, 1871.

THE NARRATIVE.

For many weeks in the small town of Dawson, Georgia, situated in the cotton belt of that state, the coming of a show had been extensively advertised by flaming posters and newspapers. The whole country for miles around was on tip-toe with excitement, as every rural population is under such circumstances. The day came at last, and black and white, old and young, comprising almost the entire population for many miles around, assembled to witness the wonderful performance of "Col. C. J. Ames' Great New Orleans Circus and Menagerie." All went "merry as a marriage bell" for a short time. The big circus was opened, crowds of fun-seekers thronged around the ticket-wagon. A small canvas, called a "side-show" or museum, stood to the east of the big circus canvas, but directly in the rear of and in full view of the ticket-wagon, and contained a wonderful ox, two Albino women, monkeys and other wonders, all to be seen for only twenty-five cents. About two o'clock, while persons were passing in and out of this side-show, and while the whole place upon which the show was held was filled with people in hurry and excitement, going to the wagon to purchase tickets, and from thence into one or the other of the shows, or from one show to the other, and to and fro generally, a difficulty commenced at the door of the side-show.

William R. Russell, with his wife and children and his brother-in-law, Oxford, had bought tickets and as the party passed into the tent the doorkeeper said there were not tickets enough for the lot, and a dispute ensued. About the same time John Kelly, who was also going in with another party,

asked the doorkeeper to let him pass in for a moment to see a man who was in the tent. The doorkeeper refused, high words ensued; there was pushing and jostling and excitement in the crowd, few of whom knew at all what the commotion was about. Soon pistols were drawn by the ticket seller and by John Kelly and his brother, Charles. Colonel Ames being in the ticket wagon, in full view of the door of the side-show, got out of the wagon, and went to the scene to suppress the row. Soon after he reached the door, a pistol was fired, which was soon followed by other shots in quick succession, until, according to the testimony of witnesses, some eight or ten shots were fired. Ames and the showman attempted to get away from their assailants, by going under the canvas of the side-show, on which was painted a picture of the big ox to be seen inside. The pistol shots created great excitement all over the grounds. Women and children who had not yet entered either show fled panic-stricken to the nearest place that promised them shelter and security. Men also ran in every direction. The performance in the big circus had only just commenced, about five hundred persons being inside. They could not see what was the matter, but they heard the shots. Many left. Some fled in such terror from the place, as to leave the conveyances in which they came behind them. Some remained in the big show and the performance went on. David Oxford, as he scrambled out of the tent of the side show with Mrs. Russell and some of the children was struck by a bullet and died in a few minutes. Colonel Ames was mortally wounded as he and his associates tried to get into the tent for shelter. The body of David Oxford was carried to town; the mother of the two Albino women, and another spectator, who were wounded, were taken to the hotel, where they could receive surgical aid, but Ames remained at his post for several hours, superintending and directing his affairs, when he was taken to an adjoining house and the best surgical attention given him, but he died from the effects of his wound the next day.

John Kelly, his brother, Charles, and Russell were indicted for the murder of Colonel Ames. John was tried first and

acquitted, largely on account of the failure of the Ames family to assist in the prosecution. Failure to obtain their assistance on the trial of Charles forced the state to abandon this prosecution as well as the indictment against Russell.¹ Charles and after him John Kelly, were then indicted and tried for the murder of Oxford and a verdict of guilty of voluntary manslaughter was returned. But the same night and before he was sentenced both John and his brother Charles, who had previously been convicted, made their escape from the jail, and succeeded in getting safely out of the state.

THE TRIAL.²

In the Superior Court of Terrell County (Dawson) Georgia, May, 1871.

HON. D. B. HARRELL,³ Judge.

May 25.

The prisoner, John R. Kelly, with Charles A. Kelly,⁴ had been indicted by the Grand Jury for the murder of David W. Oxford. He pleaded not guilty. The following jurors were chosen: William D. Murray, W. W. Lee, J. E. Harris, George Whitaker, A. H. Adams, Leroy Brown, W. B. Christie,

¹ See *post*, p. 849.

² *Bibliography.* *"The Ames Tragedy, Comprising the Brief of Evidence, together with the Speeches of Counsel for Plaintiff and Defendant, the Charge of the Judge to the Jury, and the Verdict of the same, with an Appendix, Compiled and published by Weston & Combs, Dawson, Georgia: Macon, Ga. J. W. Burk & Co., Stationers, Printers and Binders, 1871."

³ HARRELL, DAVID BRONSON. Born 1830, in Washington County, Georgia. Educated privately and studied law in office. Located in Lunyskin until 1854, when he removed to Webster County. Treasurer of Stewart County, 1856. Solicitor General of Pataula Circuit until 1858, when he retired from practice and settled on a farm. In 1861 joined army of Northern Virginia as Captain in 17th Georgia Regiment, Toombs Brigade. Elected Judge of Pataula Circuit, 1868. Representative for Webster County in State Legislature. President Bank of Richland.

⁴ Charles A. Kelly was tried on March 9th, and convicted of voluntary manslaughter.

John A. Fulton, Span Ragan, M. Worsham, G. W. Holman, O. B. Stevens.

Samuel D. Irvin,⁵ Solicitor General, for the State.

C. B. Wooten,⁶ *F. M. Harper*, *Henry Morgan*, *Levi C. Hoyle*, *R. F. Simmons*, for the Prisoner.

THE EVIDENCE FOR THE STATE.

David J. Young. On 2nd November last was at Capt. Tom Hart's shop at my daily avocation; went to my residence for dinner. After getting to my house asked my wife where sonnie George was. She said he went out to the show. Eat my dinner and went in search of him. Met some little boys and asked if they had seen George. They said he was in the side show, or museum; remarked to a shop mate of mine, who was boarding with me, we will wait till I see sonnie; was standing in front of side show and saw Mr. Russell and a lady I supposed his wife advance to the doorkeeper and started in. They had two or three children; heard Mr. Russell remark to the doorkeeper not to insult his wife; doorkeeper said he was passing in more than he had paid for; that if he had tendered an insult he begged his pardon, and offered him his right hand in token of friendship; next saw a pistol in the hands of Mr. Rus-

sell, in the face of the doorkeeper. Mr. Russell said to him if he said another word he would blow his brains out; doorkeeper then deserted his post and run round on the east side of the circus; for a few minutes the entrance of the side-show was vacant of a doorkeeper. Immediately after saw a man advancing from the outside, with a brass instrument in his hand, to the entrance of the side-show; shortly after I discovered a man coming from the inside of the show and pushing, or forcing, Mr. John Kelly out, saying, at same time: "Get out of here; it is no place to raise a row, amidst women and children." Recognized a man I supposed to be a showman, from his dress, coming from the outside into the gangway of the side-show. He met Mr. John Kelly and the other showman in the gangway; removed a pistol from his back pocket to the side pocket of his pants; it could not have been more than a minute before they

⁵ IRVIN, SAMUEL D. (1823-1890.) Born Todd County, Ky. While young, located in Albany, Ga., where he studied law, was admitted to the bar, and practiced. At outbreak of the Civil War he organized a company of the 18th Volunteer Georgia Infantry; continued in command until late in 1862, when illness compelled him to retire. Moved to Macon, Ga., in 1866, and there obtained much distinction in his profession. Was a leading Mason.

⁶ WOOTEN, C. B. Pioneer lawyer of Albany, Dougherty County, Georgia.

were outside of the gangway. The showman remarked to Mr. John Kelly, to put up his pistol, that he had the advantage of him; that he had a derringer, and would blow hell through him. At same time heard a discharge from Mr. John Kelly's pistol in the air; second shot was immediately in the earth, and right directly down; third shot was in direction to the left of the fly of the tent on the east; stepped off, some five or eight feet, and recognized my wife at my fence, waving her handkerchief at me. Started to her and after I passed about the space of the canvas, then stooped down to pick up the little child that was then to my right. Carried it up to my fence and remarked to some of them to come and take the child, that there was a man dead out here. Turned round and started back. Met Mr. Solomon and Mr. Callaway. They said to me, are you shot? Blood being on my coat from handling the child; said no, but there is a man dead around here. Turned round and went into my own yard, and did not go out for some time. The show ground was in Dawson, on Main street, running by the Methodist church. Lived on the south side of said lot. Was eight feet from the Messrs. Kellys. The first smoke that I saw was from John Kelly's pistol. He fired the second and third shots. I started home then. It was not over fifty yards from where I was standing to my house. Started immediately in the direction of my house; did not go directly to it, but turned to the right. Then went and picked up a little girl. She was folded in the arms of

a dying man, then weltering in his blood, lying on his face. The child was crying and trying to get out. Caught the child and pulled her out; did not examine the child at the time. I took the child to my fence and remarked to some of the ladies to come and take the child. The dead man was Oxford. My first position was on the rail. Saw only three shots fired; think there were but eight shots. There might have been more; saw but three shots.

Cross-examined. It was a very few minutes after Mr. Russell entered the door before the showman came pushing Kelly out. He came from the inside of the show. The man with the brass instrument came up from the outside, before Kelly was pushed out. The man thrusting Kelly out was not the man who had deserted his post. That man was a thick, heavy-set man; his mustache was a light auburn color. The man that thrust Kelly out was a tall man—had on an India rubber overcoat. When they got to the door of the entrance—before that the man from the ticket wagon meets them—he came up pretty briskly and met Mr. Kelly in the gangway. Just about that time the man shifted his pistol from the back of his pants to the front, in his pocket, and I remarked to Mr. Callaway, “that man is going to shoot somebody”—he looked like a man that would. John Kelly had not shot up to this time, and was still being pushed along. Do not remember what was said. Thought that the man pushed was declining a difficulty. Do not remember the exact words used. The man who

changed pistols when they got outside remarked to John Kelly, "Put up your pistol or I'll blow hell through you." John Kelly's first shot went up in the air, the second went into the earth and fence. The first shot could have hit no one; the second, I judge from the smoke, hit no one. At the third shot he was facing towards the east. This shot went between the main tent and the fly. Am satisfied that the last shot could not have hit a man on the inside or on the south side of the main tent. About the time I heard the third shot my wife called me and I started immediately. These were the only three shots I saw fired. When I started home, I saw the little girl just as soon as I turned the back of the tent—about twenty steps. The man was lying where I first discovered the little child. From the small tent about thirty-five feet. If the man shot was in the canvas, or on the south side of it at the time I saw the three shots fired, don't think he could have been hit by either one of them; he was not in the range. Think there were five other shots fired, but do not know who fired them. I formed the acquaintance of the doorkeeper afterwards; his name was Munroe.

Re-examined. The showman who shoved out John Kelly was a tall man, in an India rubber overcoat. John Kelly did not have anything in his hand then. It was after they got outside that he said put up your pistol. Mr. Kelly was doing nothing with his pistol; he was holding it up. Did not see anyone holding his arm. When I first saw the man shoving out Mr. Kelly they

were about halfway the gangway entrance. Do not know whether there were any words passed between them directly or not; heard words but do not recollect them; did not hear Mr. Kelly make any reply to the remark, put up your pistol. The showman was before Mr. Kelly at the time I saw him remove his pistol. Saw his pistol before I saw Mr. Kelly's. Mr. John Kelly was facing southwest in the gangway. The man putting him out had his face directly to Kelly's. After the showman passed on from the outside Mr. Charles Kelly advanced to Mr. John Kelly and caught hold of him. There was some loud talking—Mr. John and Charles and several parties were talking loud. Charles Kelly came up and tried to stop the difficulty, as though to take him away; did not see Charles Kelly with any pistol, first or last.

Milton Gammage. Was at the showground the day Ames' circus was here. Cannot tell the beginning of the difficulty. There was a little fuss started on the outside of the show; couldn't tell who was engaged in that. There was a little show, not the main show. There was a pistol or gun fired which I did not see. That drew my attention and I turned round to look and there was then a pistol fired up in the air overhead by Mr. John Kelly. The firing continued for several shots; saw Mr. John Kelly and Mr. Charles Kelly fire; they fired probably six or eight shots; don't know who they were firing at. They were firing in the direction of the outside tent. There were three men between

them and the tent. Did not know them. Their backs were to me. They were getting out of the way of the firing; they went under the canvas; saw John Kelly fire one shot before Charles Kelly fired; can't say whether he fired first or last. The three men had gone under the canvas about the time the firing ceased; did not see any one else fire a pistol that day. The men went under the canvas to the left of the door. The Kellys had their backs to me. Was acquainted with David Oxford. Do not recollect that I saw David Oxford that day, until after he was dead. He was the first I saw outside of the canvas, not many minutes after the firing; do not know how far he was lying from the little tent; did not go up to them.

Cross-examined. Was thirty or forty feet from the door of the little tent when I heard the first shot; don't know who fired the first shot; was not looking in the direction at that time. When I did look around there was considerable confusion in the crowd. John Kelly's back was to me, and he fired his pistol overhead; do not know how many shots John Kelly fired. The firing was in the direction of the three men; did not know the three men; neither of them was David Oxford; their backs were to me; don't recollect seeing Oxford until after he was dead. Remember the fly with the big ox on it. There was a door to walk in. John Kelly and the three men were standing close together, and the three men were moving off towards the canvas and went under it. Can't state positively how many shots were fired.

James Clark. On 2nd November last was in the town of Dawson; was in the side-show of Ames' circus; heard loud talking at the door; saw Charles Kelly come in; went up to him and shook hands with him. The excitement seemed to increase at the door and he went back out of the canvas; thought there was likely to be a difficulty and went to the opposite side of the tent and raised the canvas and went out; hurried to the left and went in the direction of the street. When I got about even with the extreme edge of the tent next to the street, heard a pistol fire. There were two mules and a wagon on the opposite side of the ditch; ran and got behind the wagon. In going to the wagon there were two other pistol shots fired, the last ball passing between me and the mule. Passed around in front of the mules and went to the back of the wagon. Saw two men coming from round the fly—one down on his left side, on his hip and elbow, the other one holding him by his right arm and helping him along. Saw John and Charles Kelly coming round the end of the fly, and shooting in the direction of the retreating men. These two men disappeared under the canvas, and the shooting ceased about the same time. A few minutes afterwards somebody said a man was killed, and I went to the place where there was a crowd and found Mr. Oxford there. Was inside the side-show a few minutes. There was an ox with three eyes, some monkeys in a cage, and the Albino sisters, and a negro grinding an organ., etc. Mr. Charles Kelly came in the side door

alone. Don't think I saw John Kelly until after the firing began. Loud talking first attracted my attention at the door; can't remember a word that was said at the door; from the talk it seemed there was a fuss brewing at the door; thought it likely some shooting might be done, and therefore went out at the back of the tent to take care of myself. Am not certain how many shots were fired; somewhere between seven and eight; the firing was very rapid. There were only two men went under the canvas. The Kellys were firing in the direction of the men going under the canvas; I saw no one else fire besides the Messrs. Kelly; think I saw all the shots I heard after I got behind the wagon; if there were any others they did not attract my attention. The men going under the canvas had their backs to me and to the Kellys; think the pistols they had were ordinary Colt's repeaters. The firing was very rapid; it continued not over a minute; the shots were not in succession; a man could not have gone more than forty feet while the shooting went on. The Kellys were pursuing the two men; they were getting out of the way.

Cross-examined. Saw Charles Kelly inside the canvas first. The loud talking was going on at the time. Met him when I got on the line of the east side of the tent. Heard a pistol, but do not know who fired it, and do not know who fired the two next. Know nothing of the commencement of the difficulty. The shot that came between me and the mules could not have passed through the south side of the

tent. Saw two men coming round to the end of the fly; about three feet from the end of the fly they went under the canvas. One of the men was on his left side, the other man was helping him along, stooping over. I could not say there was not other firing inside the tent but I heard no other.

William B. Oxford. On 2nd November last was in town here, at the showground in the evening; went to the ticket office to purchase some tickets to go in the show. While standing there heard loud talking going on at my back. I turned to see who it was and saw John Kelly was talking loud with some of the showmen. Very soon I saw the smoke and heard the report of a pistol in the hands of John R. Kelly. After the first fire, the firing continued pretty much all the time till it ceased. Was standing in a northwest direction from the firing. The ticket office was on wheels; it was a short distance from the difficulty. I was six or ten feet from the wagon; was standing on the old circus ring which was elevated above the surface of the ground. John Kelly, when the first shot fired, was standing with his back to the canvas, his face rather to the town. When the second shot fired, he was turned more to the east. The first shot went off before the pistol was brought to a level. My impression is the two first shots were fired before the pistol was brought to a level. Charles Kelly commenced firing about the time John Kelly fired the third shot; if they were five-shooters, I think there were ten shots; if one was a five and the other a six-shooter, there were

eleven. There seemed to be three or four men they were firing at. These showmen, after the second shot, commenced retreating. The shots were fired in the direction of the canvas. The men were very close; not more than three or four feet, at the time of the first firing. The men retreated round the east side of the canvas.

The Kellys did not move much but kept pretty much the same position; saw no one else fire but the Kellys; think I heard about ten or twelve shots; did not see the men go under the canvas. They passed out of my sight. The fly was a strip of cloth that run out three or four feet high. Am not positive whether it came to the ground or not; saw the Kellys all the time till the firing ceased. From the first shot till the last not more than two minutes elapsed. The firing was as rapid as men could shoot. The pistols were repeaters. Don't know whether they were five or six-shooters. Don't know whether they were self-cockers or not. They fired as fast as men can shoot. I do not recollect anything either of the Kellys said immediately after firing. Saw David Oxford previous to the difficulty. The last time I saw him he was in the door of the little canvas about five or ten minutes before the firing began. He was talking to Russell in the canvas. The next I saw of him he was dead; he was lying on his breast on the right side of his face.

Cross-examined. John Kelly's two first shots I think went up in the air. The Kellys and showmen were standing together fifteen or twenty feet from

the entrance of the little canvas. During the firing the showmen moved out round the fly and tent ropes, down the side of the canvas; they passed the corner of the fly before they got down. The Kellys stood pretty much at the same place all the time; when the men moved off, it was pretty much in a southerly direction, down the side of the canvas, and with one of the three men moving off was David Oxford; Oxford and Russell went into the show together; that was the last I saw of them until after the shooting.

Reuben Geise. On 2nd November, was at the showground and went to the ticket office to get some tickets; kept my family on the sidewalk; as I turned back with the tickets heard loud talking; saw John Kelly back a little raise his pistol and shoot, advancing towards two men; they ran back away from him; he shot two or three times; then saw Charles Kelly commence shooting; they were both advancing towards the men; the men fell over a rope; they both fired until they had no more loads in their pistols; the firing was as fast as they could fire; Charles Kelly was to my left and John to my right. No one else fired a pistol, as I saw. Could not tell how many persons were there; a large crowd of people—whites and blacks, women and children—all sorts

Cross-examined. Did not go into the show afterwards. The show went on as usual. Heard loud talking, harsh words, that first drew my attention. Saw John Kelly; saw one man at that time right in front of him; saw two trying to get under the canvas. John Kelly advanced

towards the canvas; John Kelly's first fire was in the air; the next was towards the men. The men going under the canvas fell over rope, and were trying to crawl under the canvas; suppose it was their aim to shoot down; but whether all their shots went that way I don't know. When the firing ceased John Kelly had advanced two or three steps from where he was when it began.

Mrs. Mary S. Halsey. On 2nd November, on the day Ames' circus was in Dawson, I was on my way to the circus; my sister, Mrs. Geise, and her children, and Mrs. Lewis and a few servants; my sister had five and I had three children; saw a disturbance; it was the report of a pistol that first excited me; told Mrs. Geise there was going to be a row and we had better leave, but my sister said, no, let's wait for Mr. Geise; at the report of the first pistol I took my children and ran; was to the left of the man who was firing; he was firing towards the side show; ran into a house near by.

James Miller. Saw a difficulty; about the time a man and his wife were entering the sideshow, and as I was turning to come out; met Mr. Russell and the doorkeeper. Mr. Russell appeared to have hold of him with his left hand, his wife hold of Russell's right arm and his pistol in his hand, and about that time he let the showman loose and passed outside of the door. A new doorkeeper took his place and the show went on. John Kelly came to the door and wanted to see a friend in there; the showman said he could see him for a bit; he replied that

he did not want to see the show but a friend. He passed into the show and stayed a minute and came out, and then a difficulty commenced between him and the second doorkeeper. The second doorkeeper had a pistol in his hand and then a dispute was between them. Kelly backed in the direction of the ticket wagon; Kelly fired in the direction of his right arm towards the big canvas top. By that time two other showmen came in from between me and the ticket wagon, and big show, and then all three showmen and Kelly were together and a good many others came around. The three fell over or stooped to get under the canvas. The next firing I saw was in the direction of the sideshow, just back of the apron that the ox was on. Don't know anyone that run up to John Kelly; John Kelly remarked that he did not want friends; that all he wanted was for some friend to give him a loaded pistol. Do not know what was the difficulty between Mr. Russell and the showman; when I saw Mr. Russell he was pounding him near the shoulder with the muzzle of his pistol; the showman was offering him his hand for friendship; the showman said he had rather let fifty men in than to have ill will to anyone; saw Mr. Russell and a woman with him, and some children, some girls; Russell passed into show and came out; can't say how many minutes it was before John Kelly came up to entrance, but it was a short time. Saw John Kelly fire four shots; men went under the canvas near the apron; can't tell any words passed between John Kelly and show-

man; John came out of canvas and repeated an oath, but can't say what it was; can't say what showman said to him; saw a large pistol in the hands of showman; cannot say the showman did anything with the pistol; did not see Charles Kelly during the difficulty.

Cross-examined. Do not know what the showman had said to Kelly before Kelly was cursing. Mr. Kelly was backed out of entrance. The showman had a very long pistol; did not understand the showman to say he had a pistol that would shoot fifteen times. Kelly was backing out to give himself room; he had room enough to have shot when he first met the man. The first shot was in the air—the pistol was above his head; did not see but five shots; the men came from towards the ticket wagon; they were tangled up together; about the time the third shot was fired they tumbled under the canvas; John Kelly shot all of the shots; if any one else fired I did not see them; the showman fell down, or got down, and went under the canvas; two shots were fired in the air—the other two in the canvas, about waist high; he shot, apparently, over where the men fell over the rope.

James H. Price. Am a physician; was called professionally to examine David Oxford; he came to his death by a pistol shot wound; the ball passed through his chest obliquely about an inch below the shoulder blade to the left of the spine and went about an inch or two below the left nipple. The ball was about 30-100 inch calibre. Oxford must have been in a stooping position; the ball

passed entirely through the left lung. The wound might cause internal and external hemorrhage; don't think deceased could have kept on his feet more than a minute, probably not so long. The lungs could not have been inflated fully after such a wound. It must have caused death in a very short time from loss of blood. Oxford was lying full length on the ground, on his face. There was a great deal of blood on the ground. I heard several pistol shots that day; heard two or three balls strike the large canvas; was sitting on the top seat on the west side from the entrance in the big show; had my little son with me. At the time of the firing there did not seem to be any excitement; afterwards there was excitement. Saw a man lying on the ground, and standing near him was a little girl, very bloody.

George Young. Saw David Oxford the day he was shot; when I first saw him he was coming out on the southside of the canvas; he raised the canvas; there was a little girl in his arms; he went sorter round to the left; was about five steps from father's fence. He came out about half bent; and did not straighten at all; he stumped his toe against the shafts of the wagon and fell; he was coming right towards me; he did not get up any more. I saw those two Albinos come out soon after Oxford; heard some pistols fire; they were fired before Oxford came out of the tent.

Cross-examined. Heard seven or eight shots that day; saw Mr. Oxford fall; my father was around in front of canvas when shooting commenced; next saw father coming around the can-

vas towards the fence; did not see him while the shooting was going on; did not see him before I saw Mr. Oxford, at all; was watching Mr. Oxford to see where he was going; looked at him to see the blood running out of his breast, and what he was going to do. My father took the little girl out of Oxford's arms and put her in our yard; did not see Dr. Price go there at all; was right smartly scared.

Dr. John R. Janes. Ames' circus paid taxes to me when it performed in this place; \$25.00 was paid to the council and \$25.00 to the county.

Dr. Clement A. Cheatham. On the day of Ames' circus was called to see a lady at the pavilion; when I first saw her she was about getting into a buggy

near the street, near the canvas nearest to the street; she told me she was the mother of the Albino children on exhibition. The wound was a flesh one in one of the thighs; it was inflicted with a ball from a pistol or gun; was also called to see Col. Ames; there were three gunshot wounds on his person—one a very serious one—of the right thigh; the ball passed behind the bone. The ball was extracted; a conical shaped ball; little larger than a buck shot; that caused the death of Col. Ames. The other wound was in the same thigh—about the commencement of the superior third; a slight flesh wound; The wounds must have been received from behind, or more to the right than behind.

THE EVIDENCE FOR THE DEFENSE.

James B. Avant. Was at the circus in Dawson on 2nd November. Heard some loud talking at the mouth of the little canvas; was on the wheel of the ticket wagon. There were two gentlemen in the wagon; one I did not know; the other was the agent; think his name was Breese; the other one started to pull out the drawer and asked the agent to move his leg; Breese asked him what he wanted; he replied, I want that pistol; he drew out a drawer and got a small pistol three or four inches long and told Capt. Breese, damn 'em, I'll stop the fuss; about when he had time to reach the little door I heard the report of a pistol; the ball of the pistol whizzed past my ears; saw the smoke rising about the mouth of the little canvas door;

about that time Charles Kelly turned loose John Kelly; saw Charles throw up his hand and a pistol fired, and saw the smoke rising to his right side; about that time John Kelly threw up his hand and fired in the air twice; there were several pistols fired; there were three men who seemed to be locked up together who began to retreat around the little canvas; some ten or twelve feet, and all went under the canvas together; that is all I saw of the fray; this was near two o'clock. Cannot tell who fired the first pistol; it was not either one of the Kellys; the Kellys were standing between me and the little canvas, with their backs to me; there were thirty or forty men about the mouth of the little canvas entrance; cannot say how

many men in the gangway; about half-dozen I suppose; next thing I saw after the smoke of the first pistol was Charles Kelly shoving John back; can't say how he had hold of him; looked like he was trying to keep him out of difficulty; I saw John Kelly when he pulled out his pistol; if he had out his pistol, previously, he had it down by his side; can't say who fired the second pistol; if I had not seen Charles Kelly draw his pistol. I would have thought he fired the second shot; John Kelly did not fire the second pistol; about the time the second pistol fired John Kelly drew his pistol and fired up in the air; Charles then drew his pistol and turned John loose; saw Charles throw his hand down; the movement of the hand was such as a man would see in knocking off a pistol; thought the smoke of the second pistol went towards the ground; after Charles turned John loose, they both drew their pistols and went to shooting; the first two fires of John were up in the air; towards the big canvas; afterwards they turned more towards the east of the little canvas; as the party retreated they fired more to the left of the little canvas; seemed to me there were ten or twenty shots; stayed there until the row was suppressed; found eleven bullet holes in the little canvas, and seven in the animal wagon.

Cross-examined. Went to ticket wagon to get some tickets for some ladies; people sometimes get on the wheel when they go to buy tickets, and there is a crowd; had just got up on the wheel when the row began; heard cursing and loud talk; don't remember the words; did

not distinguish any of the voices then. The man got pistol out of drawer on the side of wagon next to me. He got out of the wagon on the west side opposite to me; saw the man till he got four or five feet of wagon, going in the direction of little canvas; John Kelly's back was towards me when I saw him the first time; the smoke I first saw was right at the mouth of the entrance to little canvas; the firing was about half over before the men went under canvas. Charles Kelly shot three times; John Kelly shot five times; the holes run in the canvas were from the top to the bottom; there were eleven distinct holes in the canvas; there were seven in the monkey wagon. First thing I tried to do after firing ceased, was to arrest John and Charles Kelly. I did not succeed, from the fact there were so many men around them with knives and pistols, swearing they would riddle me if I laid hand on them. Went into the little canvas and inquired who started the difficulty; was acting in the capacity of a policeman that day. Met Dr. Lassetter, who asked me if I had a pistol. Said no, and he told me to come to town and get one. Met Cozart, and after I got my arms went back; went into the little canvas; there was not a soul there; saw the gentleman who got out of the wagon with the pistol; rode up the street in a buggy after the difficulty; one shot lodged in Col. Ames; did not see John Kelly's pistol fire the third time; could not swear that John Kelly had no pistol in his hand when I first saw him, because he had one hand in front of him; can swear that Charles

Kelly did not have his pistol at the time; first saw him draw it from his pants behind or from his side. About the time John Kelly fired the first time, Charles drew his pistol. Can't tell who fired the second shot; I don't know which way the bullets went; can't tell how many people were on the ground that day; there were a good many; saw a great many running; can't tell how John Kelly was dressed that day; my recollection is that he had a beard; can't tell how Charles was dressed. The men they were firing at—don't know how they were dressed. David Oxford was not one of the men; the men were all strangers to me. As they were retreating the Kellys bore round the canvas to keep in range; they did not turn far enough to turn their sides to me; when the first firing commenced could not see the pistol; when they commenced firing they were very near together; afterwards Charles Kelly bore to the left and got at farthest five feet apart.

Charles Melton. Was at circus on 2nd November; me and John Kelly and his wife went together; his wife and myself stopped outside; Charles had walked in the sideshow and John asked the doorkeeper to tell that man to step back there, I want to see him a moment. The showman said, "I shan't do it; there is always some damned man fixing up a plot to get in here without pay." The doorkeeper ran back in the sideshow. One large man came walking out with a pistol in his breeches pocket, and his hand on it, and him and Mr. Kelly got to jowering about something or other; don't know what, and

he says leave here or I'll blow hell through you, and he shot twice about on a level at Mr. Kelly, and then Mr. Kelly out with his pistol and shot twice in the air. I broke and run and left; that is all I saw; did not go in side-show; John Kelly and his wife went with me; his wife and myself stopped about ten or twelve feet from the door; was standing at the same place when the altercation between the showman first took place; they were standing right in front of door, about six or seven feet from me; there were lots of men standing round besides John Kelly and the showman. If Charles Kelly was there, never saw him. Saw Charles Kelly towards the last of the fracas; Charles Kelly sorter took hold of John by the shoulder and said come, let's go; it was after the shooting that Charles took hold of him. Charles was not there trying to get John off before the shooting, not that I saw; it was a minute or two from the altercation till the firing took place; the big showman said leave here, or I'll blow hell through him; there were two more showmen; Charles Kelly did not come until about the time the last pistol was fired, and caught hold of John and said let's leave here and have no difficulty; somebody presented a pistol behind John Kelly's head; it was a showman; the showman cursed a good deal at John Kelly; the man that did the shooting was about the size of Mr. Wooten, with a broad brim hat on; he was a very red faced man; he had shot once, and then Mr. Kelly went to getting out his pistol; do not know what Mr. Kelly was doing at the time;

think he was giving back a little; Charles, when he came, sorter caught round John, and said let's leave and have no difficulty; John had already shot twice in the air when Charles caught hold of him.

Cross-examined. Came to Dawson that day with my brother George; did not swear on the other trial I came to Dawson with John Kelly. My father lived about a mile from John Kelly. Did not see his wife take hold of him and try to keep him from having a difficulty; was behind John Kelly and the doorkeeper; John Kelly and the doorkeeper were near the fly, outside of the entrance; the showmen were facing the ticket wagon; believe John cursed some. After John Kelly shot his last shot, saw Charles Kelly; saw John shoot two shots; did not see Charles Kelly shoot; saw him draw a pistol; there was right smart of folks getting away from there; I was scared right smart. The man that put the pistol behind the head of John Kelly was sorter to his side, and then got round sorter behind him; never took particular notice of him; he had been standing there ever since the big showman had been there; they all three came out of the little show; never noticed his hat; can't say what sort of coat he had on; don't know where Charley came from; Mrs. Kelly broke and run as soon as the difficulty began—when they first commenced throwing the "damns"; don't know what John Kelly and the showman commenced quarreling about; I don't know how John Kelly shot; did not see Charles Kelly shoot; I broke

and run and did not see Charley till I got to the corner of the fence; have seen Milton Gam-mage; did not see him at the time of fuss; did not see David Young that I know of; did not see James Clark; think John Kelly had a repeater; don't know how he came to shoot in the air.

Dudley Kitchings. John Kelly had his wife and her cousin, and when he got near the show he told the ladies to stop and he went up to the door and asked where the doorkeeper was; a man with a large pistol came and told him God damn him, leave the ground; that they were not to be bluffed off that way, and that if he did not leave there he would blow hell through him. He caught him on the collar with his hand and cursed him. Two other men took hold of him by the coat collar; they all talked very loud to him and cursed, and a large man with a derringer up his sleeve gathered him by the waist and stuck his pistol to the back of his head and told him to look here, I've got the advantage of you. I'll blow hell through you if you don't leave the ground. Kelly pulled out his pistol with his left hand, as soon as he saw the derringer; as soon as the man saw the pistol in Kelly's hand he backed off about eight steps and told him God damn him, put up that pistol. Kelly told him to put up his; that when he had done so he would put up his; he said he would not shoot him till he (the showman) shot him. The showman says well, God damn you, if you won't put it up, I'll make you, and shot at him. The large man with the fifteen shooter

shot at him, too, and there was very little distinction between the shots. The third shot was Mr. Kelly's first; from this they kept up the firing till it got so thick I ran. After I ran I never heard another gunshot; that's all. His wife's cousin, Martha Reynolds, went with us. Was standing eight or ten steps from the door, right in front of it, when they came up. John Kelly's wife stood there and hallooed and screamed; saw Charles Kelly when the difficulty arose. At that time he was standing right by his brother. Saw Charles Kelly shoot once. The showman's face was towards the canvas and they had Mr. Kelly backed up against it. They shot west. The Kellys shot a little in the direction of the tan-yard.

Cross-examined. Was standing in about eight or ten steps of little show; the showmen were shooting across the canvas; the Kellys a little toward the tan-yard; I am in my fourteenth year; was not with John Kelly and wife when they came; Charley Melton and myself were standing not far apart when they came; had been there about half an hour; was about five steps from Mrs. Kelly when the difficulty began; saw a quarrel between Mr. Russell and the doorkeeper. When the lady and the two girls went in the doorkeeper probably held off the lady and jerked her out, and the showman said give me a better dollar, no gentleman would take any such money; Mr. Russell said give it to me, I am a gentleman, and I took it. Then he took the lady and went way up the street, fifteen minutes before John Kelly came

up; there were lots of men standing around, and he asked, gentlemen, do any of you know where the showman is? There was no reply that I heard except that the showman jumped up and grabbed him right on the collar; that was the first thing the man done; he said God damn you, leave the ground, we are not to be bluffed off in this way; Mr. Kelly said nothing; three or four were gathered hold of John Kelly; can't describe the two men; they seemed to be all large men; one came from inside, one from the other side, and one from the ticket wagon; they all took hold of Mr. Kelly; John Kelly did not have his pistol out at first, and never drew it till one of them stuck a pistol to the back of his head and told him he would blow hell through him; John Kelly got his pistol out from a case he had belted around him under his coat; the men all had hold of him; Mr. Kelly did not draw his pistol till that man stuck his pistol to the back of his head; Charles Kelly walked up there by his brother's side; Charles never did anything till they commenced firing on his brother; by this time they had jammed John Kelly up against the canvas and when he drew his pistol backed about eight or ten steps and said, damn you, put up that pistol; did not see Charles Kelly take hold of his brother; never saw Charley Kelly draw his pistol; saw him shoot but once; recollect the picture of the big ox; did not see any of the showmen go round it; some of the men went into the show, some under the canvas at one side, some at another; the Kel-

ly's started off just as they quit firing; I ran on ahead of them; they came right straight to town. Did not hear Mr. John Kelly ask for another pistol; know Mr. Avant, but did not see him then; Charley Melton was a little ahead of me; Charley came on to town just ahead of me; did not see him standing at the palings this side. Am certain the Kellys were firing towards the tan-yard and the showman towards the canvas; am certain John Kelly did not go inside the little show; am certain the big man jumped out and caught him by the collar; saw the fifteen shooter; it was about eighteen inches long, a very large pistol; it was not mounted with brass or silver; it was a common plain pistol; the man had hold of Kelly's collar with his left hand, waving it about with his right and swearing what he would do, and saying he could not be bluffed off that way; the showmen had a pistol apiece; one of the pistols was a Smith & Wesson, the other was a Colt's repeater; don't know whether the pistol was cocked or not; can't describe the man, he was a large man; I disremember whether he had on beard or not; the other man had a Colt's repeater. It was the man with the derringer who fired first at John Kelly; he said, God damn you, I'll make you put up your pistol, and fired; the man with the fifteen shooter also fired; the man with the Smith & Wesson, after three or four shots, commenced firing too. The man with the fifteen shooter shot next after the derringer, Mr. Kelly shot next. The third shot was Kelly's first; am certain the

man with the derringer shot towards the canvas. One of the showmen shot the fourth shot. The man with the Smith & Wesson, and the man with the Colt's repeater both shot.

S. A. Whitten. On 2nd November I was at the show when the fracas took place; was about five feet from the door of the side-show. I was there when Mr. Russell came up and was passing his family in and the showman caught his wife by the shoulder and jerked her round and ordered her out, and then they settled it and Mr. Russell and Mrs. David Oxford passed in the show. About four minutes after John Kelly came up and inquired for the doorkeeper, who had disappeared. Some two or three of the showmen came up and cursed, as though they were trying to raise a fuss with Mr. Kelly; somebody called out for Col. Ames and his gunmen; one came in front of him with his pistol in his hand; one came up behind and having presented a pistol in his hand, said nothing as I heard; the other one in front was cursing him, telling him, he had the advantage--telling him he would blow hell through him. Kelly walked back saying he wanted no fuss, and he kept following after him; I turned and walked off and then heard a pistol shot and looked back; two pistols fired before I saw any one; Mr. Kelly's pistol fired in the air; heard John do nothing to produce the difficulty; heard him only say, where is the doorkeeper? When he caught him by the coat heard the showman say, you are trying to push in the show; they said something else—I did not under-

stand what; he then called for Col. Ames and his gunmen; he pushed Mr. Kelly back; Mr. Kelly remarked don't crowd me; can't tell who shot the first fire; Mr. John Kelly had his pistol in his hand, but I did not see him shoot; saw Charles Kelly come up to John Kelly; they had hold of John when he came up, and tried to crush the fuss, and then turned and went back about six or seven steps and was there the whole time the shooting was going on; there were twelve or fifteen shots fired; did not count them, they were so fast.

Cross-examined. Did not see the showman when John Kelly came up to inquire for the doorkeeper; heard the remark very distinctly; it was in the usual tone of voice. Mr. Kelly did not have his pistol in his hands at that time; do not know who Mr. Kelly addressed his remark to; did not hear Kelly say anything else before the showman came and took hold of him. The showman was a good sized man, and had on light clothes;; don't remember his hat; he had a small pistol in his hand, four or five inches long; he called it a derringer; did not hear him say to Mr. Kelly, put up your pistol, this is no place to have a row. Mr. John Kelly was stepping back and saying, don't crowd me; did not see John Kelly draw his pistol; saw the pistol presented at the breast of Kelly; do not know whether it was cocked or not; don't know where Charles Kelly was, nor where he came from; don't know who fired the first and second shots; John Kelly fired the third; am not related to Mr. Kelly. Heard several persons

screaming; saw several persons running; did not see Charley Melton; was not acquainted with him or Dudley Kitchings; know Milton Gammage; do not recollect seeing him; am positive Mr. Russell went into the show when the difficulty was settled between him and the doorkeeper, and that Mr. Oxford went with him.

William R. Russell. On 2nd November went to the show with my family; went up to the doorkeeper and asked him what he charged for admittance; he said fifty cents for me and my wife and a quarter for the children, except the least, which went in free; paid him the money and he told me to pass in; spoke to my wife and children and told them to pass in; he remarked there were seven gone in; I said there are only four you charge for; he said seven; I said he was mistaken, there are only four; he jumped down off a box on which he was standing, and caught hold of my wife and jerked her back with an oath—come out of here; you shan't none of you go in here without you pay for the other three. My wife would have fallen to the ground, but she fell against me and dropped the child to the ground; had a child on my right arm—as he jerked her back I threw my hand on his coat and caught him by the collar and shoved him back and said, if you want to impose upon anybody impose upon me, and not upon my wife in that manner. My wife, Mr. Kin. Dail and Mr. Oxford came and took hold of me and said, have no difficulty—let's go into the show; turned him loose then and my wife took hold of my arm then with Mr. Oxford. After we got in and

was looking at the ox, my little girl said, look, pa, what is that in yonder? It was some monkeys in a wagon; heard some loud talking at the door; said to Mr. Oxford, I believe there is going to be a difficulty at the door; heard a pistol fire; in two or three seconds there were two fired right as fast as possible; soon ran across the canvas with one of my children; told the rest to follow me; when I got across I set my child down and raised the curtains, and let the curtains rest on my shoulders with my head inside, and as my children came I would catch them and push them from under the canvas; my wife came up; took her by the dress and shoved her out, too; after they all got out, missed my little boy and looked back for him, and saw Mr. Oxford go to my right side; saw a man standing right in the door where it empties in the canvas, with a pistol in his hand—the pistol slightly lowered and extended; he was looking right round where we were and I saw the smoke rising from his pistol as though he had just fired and was letting down the pistol; dropped the canvas and got out on the outside; when I got outside Mr. Oxford was just to my right; my wife and children were just before me; saw on Mr. Oxford's beard where blood had run out on his whiskers; he turned his head over his left shoulder and said, Lord, have mercy; the blood flew out of his mouth on my child's dress, and also on my wife's dress; my wife spoke to me and said, let's get away from here; took my family and children and went in a south-east direction; we went on to a

house where I learned Mr. Young lived; my wife was a good deal excited; the doorkeeper was a tolerable large, heavy-built man; was the same man I saw with a pistol in his hand; heard ball strike, I think, Oxford; it was a very short time after I heard ball strike before Oxford said, O, Lord; the ball struck Oxford as he stooped to go under the canvas. It was a 5-inch barrel Colt's repeater in the man's hand. Was not over five seconds after I heard the shot before I saw blood gush from Oxford's mouth. There was no settlement of mine and the doorkeeper's difficulty before we went in; was standing in a stooping position looking back when I saw the man Oxford pass out, touching me as he passed out.

Cross-examined. My wife, Mr. Oxford, and four children were with me; had one in my arms and she had one; the little children were not to be charged for; he charged me \$1.50—50 cents each for myself and wife; had a child on my right arm; the showman said pass in when I had paid the money; my wife went in front; Mr. David Oxford was just before me; the doorkeeper was standing on a box to my left; got out the money with my left hand; can't use my right hand; the doorkeeper ran in and jerked my wife back; she had got into the far end of the gangway; the other two children were just in front in a bunch together; Oxford was just before me, and my wife two or three steps ahead; Oxford and myself both stopped when the doorkeeper said, there are seven gone in. I quietly replied, you are mistaken; he

walked in and jerked her back so violently that the child fell to the ground; she would have fallen herself if she had not fallen against me; we were about middle way of the entrance at the time; had no pistol in my hands; I presented no pistol to the showman; Mr. Oxford, my wife, and Mr. Kin. Dail said, let's have no difficulty, and either go in or out; I remarked, I have paid my money and we will go in; the showman urged no objection to the money I handed him; there was no difficulty about that; the showman did not say to me, that was a bad dollar and that no gentleman would take it; I did not say to him that I was a gentleman and that I had taken it; there was nothing said about the money at all; when I passed on into the door I left the doorkeeper not quite in the middle of the entrance; he had some money in his hand; I saw the three-eyed ox the first thing; he had two horns; he was a medium sized ox; I saw the monkey wagon; then say two small Albinos and a large one; I did not notice the big one as I did the others; the two small ones had hair alike; can't say as to the large one; the first thing I did was to look at the ox; the next thing I looked at the monkeys; heard the first pistol fire just as I started to the monkey wagon; when the first shot fired said to Mr. Oxford and my wife, let's get out of here before we get hurt; Oxford said yes, we had better get away from here. When the second shot fired we had started across the canvas to go out; did not see who was shooting; it was outside of the door; put my right shoulder

under it; had the child and put it down and then raised the canvas; there was pretty rapid firing going on on the outside. Mr. Oxford was about the last one went out; he passed out at my right side; he passed out immediately after my wife and children; about the time I straightened up Oxford looked at me and said, with the blood gushing out of his mouth, "Lord, have mercy!" heard that my wife's brother was killed while we were at Mr. Young's; did not see David Oxford fall; did not go to where he was lying; did not tell anybody he was hurt, that I recollect of. When I left Mr. Young's house, I went back to look for my little son; he got separated from me at the door of little show; went to Dr. Cheatham's office from there; looked at deceased a moment and then went to Mr. Knott's; I left Mrs. Russell at Mr. Young's; next saw her at Dr. Cheatham's. Did not try to go back to have a difficulty; if I had out my pistol at Dr. Cheatham's, do not recollect it.

May 26.

Mattie Reynolds. Was here on 2nd November last when Ames' circus was here; came with Mr. John Kelly and his wife; he carried us down to the circus and got tickets to carry us into the side-show and circus, and there was a gentleman in the side show he wanted to see, and he asked the doorkeeper to let him go in one moment to see him; the doorkeeper wouldn't let him go in and John Kelly asked him to call him out; he told him, no, he would not do it, for there was always someone fixing some damned plot to see what he had for nothing. When

he told that, John Kelly walked off among some gentlemen, and when he walked back there was a showman out with a pistol up his sleeve; he drew his pistol up and ordered John Kelly to leave the ground, and if he did not he would blow hell through him; John Kelly took out his pistol and the showman ordered him to put it up. John said if showman would put up his, he would, and the showman shot at him; and then there was a gentleman came out and said he would scatter them; that he had a fifteen shooter; the gentleman with a fifteen shooter shot and then John Kelly fired. John Kelly's was the third shot fired; the fifteen shooter shot once more and run. Three more showmen came out and shot; John Kelly was through shooting then. Mrs. Kelly and myself stood about ten or twelve feet from entrance to side-show; Charles Melton went down then with John Kelly; he was standing somewhere else; John Kelly only went to the door; he spoke kind to him; doorkeeper spoke rough; Mr. Russell was having a fuss with the doorkeeper, and he ran and John Kelly stepped off a short distance; another doorkeeper came to the place; he was a large man; he had on a fur hat and a short coat; don't know the color; when John Kelly came back there was a tall gentleman there with a pistol; he said it was a derringer, up his sleeve, and he said for him to leave there or he would blow hell through him; there were two shots before John Kelly fired; his wife screamed twice; she was frightened; Charles Kelly tried to get John out of the fuss.

Cross-examined. Did not see John Kelly go back into his house that morning to get pistol. John Kelly bought six tickets that morning; we did not go in at once; don't know why. Mr. Russell was a-quarreling when I got there; Mr. Russell had a pistol in his hand and threatened to shoot the doorkeeper and he ran; the children were standing in the doorway with their mother; Mr. Russell had a baby in his arms a part of the time; Mrs. Russell and the children ran off when the doorkeeper did; Russell stayed there; Mr. Kelly then walked back; Mr. Russell was standing there; Mr. Russell ran up and shot twice at the showman and ran. The showman was a short distance from the door when the show man came out and shot at John Kelly; Mrs. Kelly took hold of his arm; that man with the derringer came out from between the little show and the canvas; John Kelly fired five shots; one showman fired once, one twice; can't tell how many shots exactly; saw five showmen there; I did not see Charles Kelly fire but two shots; he and John were about two feet apart; the showmen fired as fast as they could.

Mrs. Amanda J. Russell. Was at Ames' show; went into the small side-show, me and Mr. Russell and the children, and brother Dave and his child went in together; after we got in a minute, the doorkeeper of the small side-show came in and jerked me round like he was mad, and ordered me out, saying, you have not paid your way in yet. Mr. Russell followed on and caught him by the collar and told him not to im-

pose upon me; that I was his wife, and that he had paid my way in there; took hold of Mr. Russell and so did brother Dave, and told him not to have any fuss, and that the showman would do right; thought we had got the difficulty stopped; then Mr. Russell, myself, children, and brother, Dave Oxford, went into the show together; soon heard a fuss outside and two or three pistols fired; brother Dave and Mr. Russell both said let's get out of here; we went out of the south side of the canvas; not out of the door; Mr. Russell held up the canvas and told us to go out. He passed out the children and myself; brother Dave was to the right of Mr. Russell; as we got out of the circus I discovered that brother Dave was wounded; the blood fell on my clothes and on my little girl's clothes; was scared, looking to be shot every moment; we went on to Young's house.

Cross-examined. Am the wife of Wm. R. Russell; had been

inside the show before the showman pushed me back; had looked at nothing; believe Mr. Russell went in first; brother Dave ahead of both of us; both little girls and little boy along, who ran back and did not go in at all; do not recollect that the showman asked Mr. Russell's pardon; did not see Mr. Russell have a pistol out; myself and the little girl did say, Oh, pa, don't do so, don't have a difficulty; did see the showman with a pistol; Mr. Russell did not seem to be much excited; I do not know whether Mr. Russell was drinking or not; if he was drinking any there, I could not tell it on him; kept Mr. Russell at Mr. Young's a half hour; he wanted to go and hunt up brother Dave; Mr. Russell did not find our little boy for two hours; did not see any of the shooting; I think I heard or saw a bullet make a hole in the canvas right in front of me, as I went out of the canvas; heard as many as three shots before we started; the firing was heaviest just as we went out.

IN REBUTTAL.

Richard C. Peoples. I heard Mr. Russell, in the trial of Charles Kelly, describe how he stood when he went out of the small show; was then a juror in the case; Mr. Russell then said that as he started out he stooped and held the canvas on his left shoulder, and as he went out he looked back, turning his head to the right over his right shoulder; he said he was in stooping position, looking back on his right at the showman with the pistol; he said he went to the

left to the street and to Mr. Young's house.

Cross-examined. My recollection is that Mr. Russell said he had the canvas on his left shoulder; don't think I can be mistaken.

Tim Sullivan. Was at the show ground the day Ames' circus was here; saw Mr. Kelly and the showman standing at the door having some words; don't know exactly what the words were; at first the showman said he might scare some people, but

he could not scare him; then, the showman was standing at the door; pulled out his pistol and held it at his side; Mr. Kelly stepped round and shot his pistol off in the air; he shot his pistol the second time in the ground; saw two shots fired; then I moved off towards the fence; I saw the showman fire; don't know what sort of a pistol the showman had; saw no difficulty between Mr. Russell and showman.

Cross-examined. The showman had a pistol in his hand to his side; Mr. Kelly was about five feet from him and was not advancing but retreating from the showman.

Jacob L. Solomon. Was at the show ground the day Col. Ames was here; I was at the side-show; went down to get some change, and whilst I was there Mr. Clarke came up and told the doorkeeper to take out pay for two and I remarked, for three (I think it was John Clarke), and he said all right, come in with me; Mr. Russell was standing there at the time, and he asked the doorkeeper what was the price of tickets; he told, twenty-five cents apiece; Mr. Russell remarked that was too much for children. The doorkeeper said, fetch up your children and let me see them. Mr. David B. Oxford had a child in his arms and remarked, do you charge for this child? and he said, no, sir, I do not; if he was larger I would not; remarked, you have a five-dollar bill of mine, and he said, yes, and I will give you your change in a moment; went inside of the tent and by the time I got to where the big ox was, I heard a screaming of women and chil-

dren; immediately turned and ran out of the tent, and as I got to the door, I saw Mr. Russell make a pass at the doorkeeper—a blow. His wife and children had hold of him and were hallooing and screaming, saying, Oh, don't. The doorkeeper broke and ran; went round to the right of the tent and to the big tent. In a few minutes Col. Ames came up with two other men from the big tent, or from that direction; they went into the door of the small tent and got into a conversation with Russell and told him not to create a disturbance; that they could scare the women and children, but could not scare them. Col. Ames was talking to Russell and Russell started to draw a pistol and Ames drew a small derringer and said, put up your pistol; I have the advantage of you. One of the showmen, a large man, ran up and drew a pistol and Charles Kelly said, God damn you, put up that pistol. The showman put up the pistol. Just about that time the two Kellys fired, and Mr. Russell also, and then the showman fired two shots, and then he and Col. Ames and a negro broke and ran and rolled themselves right under the tent. The two Kellys continued firing until they had exhausted their pistols, and John Kelly remarked, if he had a friend that he would furnish him a pistol until they could clean out the Yankees, or the show; don't know which; there was no firing after this was said. Charles Kelly told the showman, who had drawn his pistol, God damn you, put up your pistol, and the showman did so; about this time the firing commenced by John and Charles

Kelly and Russell. Three shots appeared to be fired simultaneously; don't know the name of the showman that fired; he was a large man and fired in the direction of John Kelly. The showman fired two shots and broke and ran. They turned up the fly of the tent and rolled under into the tent. John and Charles Kelly fired in there until they disappeared into the tent; fired in the direction of them as they went under the tent.

Cross-examined. Am quite hard of hearing; it is probable a good many things were said that I did not hear; Russell was drawing his pistol and had it at a level at his side when Ames came up; Ames said: "I have the advantage of you"; did not heard him say that he would blow hell through him. It was a large showman that shot; only one showman shot; Charles Kelly came up side of Russell, and John sorter following. The large man, with light suit, had what I judged to be a Colt's repeater; Charles Kelly, previous

to his fire, told him to put up his pistol; saw no showman, except this one and Col. Ames, have pistols; Charles Kelly seemed to come up from the left of me, rather back of me; John came from towards the big tent; did not see them come together; the showmen broke and ran backwards, all in a body together, and rolled right under the tent to the left door.

James Miller. I saw Russell, after the firing, was to the left of the body of men who had huddled together, coming from the direction of left of side-show; it was not a great many minutes; John Kelly was then arming a crowd of his friends; don't know where Russell went, as I came away; don't recollect that any person was with Russell. Next time I saw Russell, he was just below Dr. Cheatham's store; he was wanting to go back down to the show; Kin. Dail was holding and talking to him to keep him from going back; he did not struggle much, but wanted Dail to go with him.

THE SPEECHES OF COUNSEL.

Opening Argument for the State.

Mr. Irvin. Gentlemen of the Jury: At length, after over two days of calm and patient investigation, the testimony has been delivered from the stand. The witnesses, upon whose statement of the facts you have to be controlled in making up your verdict, have performed their parts upon the stage, and have retired behind the scenes. Yourselves, my brethren of the bar, who represent the prisoner, myself and the Court, are left the sole actors in this unfortunate drama. One by one we shall pass away, until you alone, are left—the sole arbiters between the state and the accused. And when you

shall have played your parts, the curtain will drop upon the entire performance, leaving to the calm judgment of the future, when the feelings and prejudices of the hour shall have passed away, all our acts for approval or disapproval.

The right of trial, by jury, is one of the most sacred rights known to our laws. It has cost many drops of precious human blood, and millions of treasure, but it is only of value when the duties of jurors, in cases like the one at bar, are conscientiously performed, in the fear of God, and with an eye single to the best interests of society. You, gentlemen, have been selected on account of your supposed impartiality between the state and the accused. Our legislators, looking to an impartial administration of justice, have framed a series of the most sifting questions to be propounded to every juror, the sole object being to get men who are free from bias or prejudice, either for or against a person accused of crime. No man is to be prejudged. All men are, by the law, presumed to be innocent, until the contrary is manifestly made to appear, by legal and competent evidence. The theory of the law, therefore, is that your minds, when sworn as jurors, were like this piece of paper, without a spot, or stain of passion, sympathy or prejudice. Your judgment is to be made up from the evidence and the law, and must truly—if you give a righteous verdict—reflect and give expression to that evidence and the law in a written verdict, like one or the other of these.⁴

Within the recollection of your speaker, and most of you, gentlemen of the jury, there was a wonderful discovery made of an art, by which the image of the "human face divine" could be reflected, and so perfectly and durably impressed upon a plate of polished metal, that any friend, or person who knew the original, would at once recognize the likeness; and without any effort of the mind; be able to name the friend or acquaintance who had sat for the picture. I would compare the trial by jury to the process discovered by Daguerre, and

⁴ Mr. Irvin held up before the jury two pieces of white paper, upon one of which was written "Guilty"—upon the other the words "Not Guilty."

impress upon your minds the striking analogy existing between that process and a fair trial in a case of this kind. First, a plate was burnished until there was not left upon its surface a single spot, or speck of any kind, to mar its beauty, or detract from its perfect similitude to the object sought to be impressed upon it. If the least spot, undetected by the operator, was left upon the plate, the beauty of the picture was marred, the likeness imperfect and worthless, and a new plate, free from the blemishes of the first, had to be prepared and substituted before a perfect likeness could be impressed upon it. So if there is left upon your mind the least spot or speck of passion, sympathy for, or prejudice against, the accused, you are not impartial jurors, according to the intendment of the law; the beauty and symmetry of your finding will be marred; your verdict will not properly reflect the evidence of the witnesses, or the law applicable to the case; injustice will either be done to the accused, or a violated law will go unvindicated; and those of intelligence, like yourselves, who witnessed the trial will be unable, in your verdict, to recognize the true outlines, features and expressions of the case, as made before you, by the evidence and the law.

But there is another analogy to which I wish to direct your attention. In the process of which I have been speaking, the whole form and features of the sitter had to be placed fully before the camera ere the operation commenced, which was to transfer the likeness of that form and those features to the polished plate; the nose or the mouth or the eye or the forehead could not be separately taken, and then all blended together into one harmonious whole, and a perfect picture or likeness produced. So if you should attempt to make up a judgment by piecemeal you would not succeed in coming to a just and righteous conclusion. The evidence of the witnesses must first be heard, then the argument of counsel on both sides, who view the evidence from different standpoints; and I bespeak in advance for my brethren who appear for the defense, a patient hearing. You have already heard the facts from the witnesses as detailed from the stand, those facts, from your

standpoint—the jury box—have doubtless made certain impressions upon your mind; hear those facts again from counsel for the defense, from another standpoint, and see what change that may produce in your minds, or note the difference in the impression upon their minds and your own, then listen to those same facts as I shall detail them in conclusion, see which of us is right, which wrong, or where either of us and yourselves agree or disagree; weigh all the facts well, hear our version, then compare ours with your own. “Prove all things, hold fast that which is good.” We are searching for truth. The object of all our labor in this investigation has been to arrive at truth, and to avoid error.

“Truth crushed to earth shall rise again,
The eternal years of God are hers;
But error, wounded, lies in pain,
And dies amid her worshippers.”

If your verdict speaks the truth, it will speak what the law intends, and what justice requires, and our labor will not be in vain whatever may be the result. Having heard argument of counsel, then hear the charge of the Court. The Legislature, in kindness, and in the interests of humanity, has invested one with power to speak for the law, to explain to you what the law is; and while it is true that in criminal cases the jury are “the judges both of the law and the facts,” it is the veriest nonsense to say that twelve men, taken from the common walks of life—however intelligent and however honest—can become full-fledged lawyers in the course of a single trial of this kind, so as to be capable of judging what is law and what is not law. If you, in your blind judgment should determine that to be law, which is not law, how fearful is your responsibility? Then the safest and best way is to take the law from the Court. If he gives it to you wrong, there is a tribunal to correct him. If you set yourselves up, as judges of the law in opposition to him, your will may be regarded as supreme; gross injustice may be done, and there is no power to correct you. Then, after all is done, after the Court gives you the law in charge, and you retire to your room, the prepa-

ration for a just verdict is complete; the sifter is before the camera; the plate rightly prepared is ready for the impression to be made upon it; the picture will be a true picture, and the likeness and similtude of the evidence and the law applicable to the case, any one who heard them and knows them, will at once recognize the result as true. Your consciences will be at rest, and you will receive a just reward in the commendation—and who would ask a greater—"Well done, good and faithful servants."

Your attention is requested, while I, as briefly as possible, attempt to put before you, the law applicable to this case. I am bound to give counsel for the defense notice of the law upon which I rely, and this is right. No advantage, even in argument, should be of him who is upon trial for his life.

I beg leave, first to call your attention to an Act of the Legislature of Georgia, approved October 18, 1870, entitled "An Act to preserve the peace and harmony of the people of the state, and for other purposes."

Section first provides: "That from and immediately after the passage of this Act, no person in said State of Georgia shall be permitted, or allowed, to carry about his or her person any dirk, bowie knife, pistol or revolver, or any kind of deadly weapon, to any court of justice, or any election ground or precinct, or any place of public worship, or any other public gathering in this state, except militia muster grounds."

I shall use this law for the purpose of showing, that upon that unfortunate day of November, 1870, the defendants, John R. Kelly and Charles A. Kelly, appeared in Dawson, and went to that show ground, in violation of the public law of the state; in other words, that they were unlawfully there.

The next statute to which I call your attention is, an "Act entitled an Act to levy and collect a tax for the support of the government for the years 1869 and '70, and for other purposes; approved March 18th, 1869." Acts of 1869, page 160, section 11 provides:

"That all circus companies shall pay one hundred dollars for each day they may exhibit in cities containing a population over ten thou-

sand, and fifty dollars in all cities containing a population between five and ten thousand, and twenty-five dollars in all towns, or other places, with a population under five thousand."

I shall use this act, in connection with the evidence, for the purpose of showing that Ames' Circus Company was in Dawson lawfully, on that day; that having complied with the law of the state, as well as with the ordinances of the town, by the payment of fifty dollars, it had a right to be here.

I shall take the position in conclusion, and hope to maintain it to your satisfaction, that if Colonel Ames, or the men of his show, acting under his authority, after this assault was made upon them had taken the life of any of the assailants, they would have been justifiable under the law; that it was not only their right to protect themselves, but that it was a sacred duty, of still higher obligation, to protect and defend the helpless women and children, and other guests, who had come on that day to witness their exhibition in Dawson.

I call your attention, in the next place, to section 4442 of the Code of Georgia, for the purpose of showing that the defendant John R. Kelly, in connection with his brother, Charles A. Kelly, was guilty of another violation of the law of this state on that day, by engaging in an affray "in a public place, to the terror of the citizens, and disturbance of the public tranquility," and while so engaged in said violation of the law, the offense charged in this indictment was committed, thereby greatly aggravating the moral turpitude of the crime.

My first legal proposition is, gentlemen of the jury, that the defendant, John R. Kelly, is guilty of murder.

My second is, that if not guilty of murder, he is guilty of manslaughter, "in the heat of passion, in the commission of an unlawful act."

I call your attention to the code, sections 4253, 4254, 4255, 4256, 4258, 4259 to 4261. But, gentlemen of the jury, I call your attention particularly to section 4259, which is in these words:

"In all cases of voluntary manslaughter, there must be some actual assault upon the person killing or an attempt by the person killed to commit a serious personal injury on the person killing, or other

equivalent circumstances, to justify the excitement of passion, and to exclude all idea of deliberation or malice either express or implied. Provocation by words, threats, menaces, or contemptuous gestures shall in no case be sufficient to free the person killing from the guilt and crime of murder."

Also to section 4261, defining involuntary manslaughter, which is in these words:

"Involuntary manslaughter shall consist in the killing of a human being without any intention to do so, but in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner: Provided always that when such involuntary killing shall happen in the commission of an unlawful act, which in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a riotous intent, or of a crime punishable by death or confinement in the penitentiary, the offense shall be deemed and judged to be murder."

Also to section 4267, which is in these words:

"If a person kill another in his defense, it must appear that the danger was so urgent and pressing at the time of the killing that in order to save his own life the killing of the other was absolutely necessary; and it must appear also that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given."

So much for our own Code, gentlemen, which is the law of this state. There are also principles of the common law, or decisions of the courts, both in England and this country, which are of the same binding force and effect, and which time and experience have demonstrated to be good law, and by universal acceptance and acquiescence have become law; to be observed as such, recognized by juries, and enforced by the courts.

By these principles you will see that what a man, under certain circumstances, might lawfully do in one place, he can not lawfully do in another place. While he might lawfully drive a horse at great speed along a private road, in an unfrequented place, he cannot lawfully drive a horse at a like speed, along the crowded streets of a city, and in a public and much-frequented thoroughfare. While, if an accident happen in the one it would be adjudged misadventure, in the

other it would be adjudged murder. While a man engaged in building a house in an unfrequented spot might lawfully throw from the scaffold rubbish, he might not lawfully do so in a city, where the streets are crowded continually with persons passing to and fro. In the one case if death ensued from the act, it might be simply misadventure, in the other it would certainly be considered murder, from the very recklessness of the act—showing of itself an utter disregard of human life. That, while persons might engage in innocent play with weapons, not dangerous, or likely to inflict serious bodily harm, on either, the same persons cannot lawfully engage in sport with weapons dangerous, or likely to produce death from the negligent handling thereof. What might be lawful in the one case, would not be lawful in the other. What would be misadventure in the one case would be murder in the other.

The application I wish to make of these authorities is this: That while the Kellys might have been justifiable, or excusable, for shooting at the showman in a private place, strictly in self-defense, or in the defense of habitation or property, they were not and could not be justifiable or excusable in shooting recklessly at the showman in a public place, and in the direction of a crowd of persons, where death would be likely to ensue from the consequences of their acts, and those persons in no way connected with the difficulty in which they were engaged. To show that what might be justifiable or excusable homicide in the one case, would be adjudged murder in the other.

I also call your attention to the case in 1st Gallison's Reports, 625, *United States v. William Ross*, as peculiarly applicable to this case. You will see, gentlemen, that this decision was rendered by the great Judge Story, whose commentaries upon the constitution, and whose works upon equity, agency, bailment, contract, and almost every other department of the law, now constitute our standards in all the courts of all the states of this union. Says the learned Judge in this case:

"To constitute the crime of murder, it is not necessary that the slayer should have a particular enmity or malevolence against the deceased; it is sufficient, if there be either a deliberate malice in the act, or circumstances of cruelty or malignity, carrying in them the plain indications of a depraved, wicked and malignant spirit. Nor is it necessary, to constitute murder, that the party should himself inflict the mortal wound. It is sufficient if he is present aiding and abetting the act. In common sense and reason, as well as law, the ruffian who stands by and directs or encourages the bloody deed is equally guilty with him who applies the poignard."

So, in this case, gentlemen, I contend that it matters not whether John R. Kelly, or his co-defendant, Charles A. Kelly, fired the fatal shot which deprived David W. Oxford of life, both are alike guilty, as I shall endeavor to demonstrate to you, in conclusion, from the evidence. Under the circumstances of this case, the act of one, in its fatal consequences, was the act of both, and the acts of the two combined constitute the crime charged in this indictment. Says the learned Judge further:

"If a number of persons conspire together to do any unlawful act and death happens from anything they do in the prosecution of the design, it is murder in all who take part in the same transaction. * * * More especially will the death be murder if it happens in the execution of an unlawful design, which, if not a felony, is of so desperate a character that it must ordinarily be attended with great hazard of life; and a fortiori if death be one of the events within the obvious expectation of the conspirators."

And what other "obvious expectation" could the defendants in this case have entertained, when firing their pistols with deadly aim, and as fast as it was possible to fire shots in succession from repeaters, "at and towards a tent or canvas used for the purpose of a show, filled with, and surrounded by, women and children and male citizens," but that "death must ensue" in prosecution of the original design? The law presumes, gentlemen, that every man intends to do just what the legitimate consequences of his own acts accomplish. And where one, reckless of human life, fires a gun into a crowd and kills his dearest friend, it is murder—the slayer is considered an enemy of mankind and deserving of punishment as a murderer, because in such a case "all the circumstances

of the killing show an abandoned and malignant heart"; and the law implies malice as the prompting and impelling motive.

I call your attention, also, to some few of the numerous decisions of our own Supreme Court, applicable to the case now before you, and still further illustrative of the principles of law I contend for. And first, I cite the case of *Epps v. State*, 19 Ga., p. 120, in which the Court, per Lumpkin, J., say:

"We concur, however, with the Court below in holding that if it (the killing) had been accidental, under the circumstances, it would still have been murder. If one goes to the house of another to take his life, and a death struggle ensues, on the one part to execute the felonious purpose, and on the other to escape, and death ensues from the fortuitous firing of a gun, what is there in such a case to mitigate the offense? A man points his rifle at me with intent to shoot, and by some means the ball is prematurely discharged and I am killed, can this be manslaughter?"

A very pertinent inquiry, made by that great and good Judge. Aye, and a most merciful and righteous Judge, also.

I next cite the case of *King v. State*, 21 Ga., p. 223. Exception was taken to the charge of the Court to the jury, in that case, as follows, viz.: "7th. Because the Court erred in charging the jury, that if the prisoner was present when the injury was inflicted upon Suggs, and participating in the affray, and attempting to strike or inflict a blow, whether he struck a blow or not, he was equally guilty with the person who did strike." Upon this ground of error, the Court, per McDonald, J., render this decision:

"The charge of the Court was given in reference to the evidence submitted to the jury. The prisoner was using a knife and attempting to cut or stab the prosecutor, at the time the latter received the blow. In fact, he was defending himself against the knife when he was knocked down. There was evidence to justify the charge. All the circumstances given in evidence show that the prisoner and his brother who gave the blow, had a common intent to murder, or inflict other violent personal injury upon the prosecutor, and the jury had a right to infer and find a murderous intent."

What a striking analogy between that case and the one at the bar? Two brothers engaged in that affray; two brothers

engaged in this; in both cases with a murderous intent. In that case, however, the intent was not consummated, but in this, alas! how fully and completely was that intent carried out, in the killing of two human beings and in the wounding of a third; that third person, too, a woman!

I also cite the case of *Lyon v. State*, 22 Ga. 401. In that case, counsel for defendant requested the Judge in the court below, to charge the jury: "That an actual assault by the person killed upon the person killing, may reduce the offense to the grade of manslaughter." The Supreme Court in its judgment as to this point say: "We think there was no error in the refusal of the Court to give the charge as requested. The request was simply an abstract principle of law, proper or not, according to the proof in the case in which the proof was made. In this case, the defender was a trespasser on the prosecutor's premises, at a late hour in the night. He carried deadly weapons with him, which it was unlawful for him to carry, and the evidence shows he was quite ready to use them." Just as we say, in this case, the two Mr. Kellys carried deadly weapons with them to that show ground, on that bloody day, which it was unlawful for them to carry; and the evidence in this case also shows that they were only too ready to use them, and did use them with most fatal effect. But the Court say further, in the case referred to: "His going armed with a loaded pistol, prepared to meet any emergency, is evidence of malice." Lyon was convicted of "an assault with intent to murder," under the facts of that case. The Supreme Court laid great stress upon the fact, that the prisoner went to the house of the prosecutor armed, in violation of law, with a loaded pistol, prepared to meet any emergency, which fact alone, they said, was evidence of malice."

What was the necessity for these loaded pistols at an assemblage of the people of this state, for the purpose of amusement? None whatever. Then may we not legitimately infer a malicious intent on the part of the prisoner and his brother in carrying to that place, on that day, pistols loaded with powder and ball—"prepared for any emergency?" particularly

when the carrying of said pistols or any other arms, in any manner, whether openly or concealed, to such a place, was expressly prohibited by law?⁵

One more case, gentlemen, and then I shall close, so far as the law is concerned; and that is the case of *Hill v. State*, 28 Ga. 606. Our good old Judge Lumpkin also pronounced the Court's judgment in that case. He says:

"We affirm the judgment of the Court below on all the grounds taken in the motion for a new trial. And there is but one that we think requires any comment. Hill was indicted as a principal, and the evidence makes it probable that Griffin struck the blow or blows which killed Mrs. Sadler. Can Hill be convicted under the indictment?"

Mr. Justice Foster says that the identity of the person supposed to have given the stroke is but a circumstance, and a very immaterial one. The stroke of one is considered in law, and in sound reason, the stroke of all. They are all principals in law, and principals in deed.

It is not necessary for you, in this case, therefore, to inquire whether John R. Kelly or Charles A. Kelly killed David Oxford. If he was killed by either of them, in manner and form as charged in this bill of indictment, both are guilty of his death, and both are principals in the crime.

I have been thus particular, gentlemen of the jury, in reading and commenting upon the law applicable to this case, because it is all important that you should have these legal principles firmly fixed in your minds when you come to consider the evidence, with a view to a final conclusion, in making up your verdict.

You are not to take what I say as evidence, in so far as I may correctly quote the evidence; neither are you to accept the statements of any counsel as evidence in this case—the witnesses sworn according to law give you that. It is my duty to weigh and consider that evidence before you, in order—not

⁵ Counsel also referred to and read parts of the following cases: *Mitchell v. State*, 22 Ga. 234; *Thompson v. State*, 24 Ga. 305; *Buchanan v. State*, *Id.* 284.

that I may improperly influence your findings—but that I may aid you in coming to a just and righteous conclusion. If I know my own heart, I have no other motive, no other end in view, than the impartial administration of justice. If the evidence and the law point unerringly to the guilt of the accused, so find him; but if they pronounce him innocent, in God's name I bid you so declare by your verdict. I would not hurt a hair of his head, I would not have his blood dripping from my garments, for ten thousand such worlds as this. If you have upon your minds, at the conclusion of this case, "a reasonable doubt" as to the guilt of the accused, give him the benefit of that doubt and find him not guilty. Our good old mother, the State of Georgia, thirsts not for the blood of any of her children; and even now, her bowels of compassion yearn over this unfortunate son who is accused of crime. She is not vindictive—she would not punish any, but that the safety, the peace and good order of society demands it at her hands. She would punish in mercy and love, simply to show the wicked and lawless that if they incur it, the penalty will be inflicted, to deter others from the commission of like offenses, and to assure the good, obedient and law-abiding of her protection. To vindicate her laws, to maintain and defend their majesty and supremacy, is the only object I have in view. I have nothing to say against the prisoner. He is innocent unless you find him guilty. Let the evidence in this case judge him, not me.

I shall contend, in conclusion, that the evidence clearly, and as unerringly, points to his guilt, as the needle to the pole. I shall contend, that all the state's witnesses are consistent, and make out a clear case of guilt; that the witnesses for the defense are all inconsistent and contradictory to each other, save one, and that one corroborates and sustains the state's witnesses. To some of the witnesses for the defense I shall, in conclusion, give the charity of my silence, and leave to your minds the full effect of the impressions made by their evidence as detailed from the stand; they have my sincere sympathy and condolence.

But I put my brethren for the defense upon notice, that there is one witness, whom I shall take great pleasure in "picking"; and I flatter myself, gentleman of the jury, that when I get through with the skeleton of his evidence, there will not be flesh enough left upon its bones to sweeten the tooth of a chigger.

Your mercy, gentlemen, may be appealed to by counsel for the defense, but permit me to say in all sincerity, that jurors have nothing to do with mercy. The law knows no mercy. "An eye for an eye, and a tooth for a tooth," are its inexorable demands. You are here to try and determine for the country, a cold, lifeless, unsympathetic, unprejudiced question of fact: "Is the prisoner guilty or not guilty of the crime charged in this indictment?" That is the sole question before you. Mercy is as foreign to the question as prejudice, which you are sworn you have none of, either for or against. Mercy is a very appropriate plea for executive clemency, but not before a jury. You are responsible to God and your country only, for a faithful, impartial and conscientious discharge of duty, and there your responsibility ends. The law is responsible for the consequences of your verdict when thus rendered. If a penalty is to be inflicted, the law inflicts it,—not you. Let no morbid sensibility influence you in your finding, but, "let all the ends thou aimest at be thy God's, thy country's, and truth's."

MR. HARPER, FOR THE DEFENSE.

Mr. Harper. Gentlemen of the Jury: This has been a long and tedious investigation; for three consecutive days it has dragged its slow length along, and yet no conclusion has been arrived at. A most earnest, and I might say, extraordinary, effort is being made by the State of Georgia, through her Prosecuting Attorney, to take away the life-blood of this unfortunate defendant. For the second time within a very short period, has he been arraigned before a jury of his country, charged with the high crime of murder, all on the same

memorable day and in the same tragedy. Men from all parts of the state are being pardoned who have committed the most aggravated offenses, some before and some after conviction, by the authority of the state, and yet, strange to say, in this particular case so anxious is that same authority to convict this man that the regular state's counsel has been ignored and other counsel substituted, who it seems that nothing but blood will satisfy. In view of all this, gentlemen, I hope you will not grow weary and become stupid under the pressure of the gloomy hours of this long investigation, but I beseech you to let your minds be active in your search for the truth, and stand, as just and true men, with open hearts, ready to receive all the light, that may be shed upon this transaction by the counsel, who, I humbly trust, have studied this case with a view of ascertaining the whole truth. I want you to hear me, gentlemen, not for myself, but for John R. Kelly. I speak to you first in his behalf, and also want you to hear me in behalf of his wife, the companion of his youth, who comes before you with her bosom yearning for him, and says to you in all the innocence of a Christian woman, "Gentlemen of the jury, spare to me my husband." I want you to hear me for his little boy, who comes before you today and with his little prattling hands upon your knees and with the first accents of his infant tongue, says: "Gentlemen of the jury, spare me my father." I want you to hear me for his honored old father, who is before you with his gray hairs, and his time-furrowed cheeks, saying: "Neighbors and friends, if it be possible, spare my boy." I also ask you, gentlemen, to hear me on account of that pious old mother, who comes before you bathed in tears of sadness and sorrow, and begs you, in view of a mother's peculiar love, to spare her darling son, if you possibly can do so under the evidence, and turn him over today into the hands of the Great God who made him, who has said in His own divine language, and by His own divine authority, "Vengeance is mine, I will repay." Having given you so many great reasons why we think we are entitled to a patient hearing at your hands, I want to give you now a rule, and ask

you to try this defendant by that rule. It is a wise and just rule—one which ought never to be departed from or forgotten in cases like this, and now I ask you to listen to this rule:

“We, as jurors, must look at all the influences which have surrounded our fellow-man, and then sound his heart by the plummet we have applied to our own. We judge not according to appearances. We trace the cause from the effect and consider whether there is any necessary connection between the act and the alleged motive of it. And when we have heard all and gone through with the anatomy of the heart, we who feel the influence of all motives which prompt to action, and all passions that stir the human breast, know how to judge our fellow.”

Hence the inestimable value of trial by jury; but what a mockery it becomes, gentlemen, when the issue of life and death is tried without evidence and without due deliberation. In view of this important fact, we, who have resting upon us the great responsibility of this defense, have made upon our part (as I think I can truthfully state to you), an earnest, and an honest effort to place plainly before you all the facts and circumstances connected with this tragedy, from beginning to end, so that you might, if possible, under the facts and circumstances taken together, bring order out of all this confusion, and return in this case a verdict which will satisfy your consciences, as well as meet the ends of law and justice. I shall make it my business, gentlemen, more particularly to deal with the facts that are to guide you in your secret deliberations, and also to govern you in the final determination of this important issue.

The law is written in the books, plainly to be read and understood. You are the judges of that law, in all criminal cases, as well as of the facts, and if you should return a verdict unsustained by the law you and you alone are responsible for it. We are determined you shall know what the law is, which we think ought to govern this case, which will be read to you by my brother, Wooten, who will follow in the defense. I will state to you, that our Supreme Court, in the case of *Jones v. State*, 36 Ga. 428, solemnly decided that when a felonious assault is made upon a man by another, with a wea-

pon likely to produce death, the party assaulted has a right to defend himself against that assault by any means at his command.

Now then, let us reason together about these facts, apply the law just referred to, and be guided by that rule which I laid down a short time ago, and asked you not to forget, and see whether or not the State of Georgia has sustained, by satisfactory evidence and beyond all reasonable doubt, the charges she has made against this defendant.

Let us walk together now in the light of the evidence. On the second day of November last, Robert Russell, a good citizen of your county, came to Dawson, accompanied by his wife and little ones, at the special instance and request, and by a published invitation of Colonel Ames and his showmen, to gratify their curiosities in looking at the show which they proposed on that day to exhibit. Came to town peaceably, went to the show ground peaceably, and remained peaceable and quiet until his wife was grossly insulted by the ruffian at the door of the side-show, who, as the evidence shows, violently caught her by the shoulder, snatching her nearly to the ground, and causing her to drop the little infant she held in her arms, all under the flimsy pretense that Russell was trying to pass in more than he had paid for. Right there, gentlemen, he ought to have been discharged from the employment of Colonel Ames, instead of encouraged by him; and had he done this, in my opinion, this fatal affray would never have taken place, but would have passed off quietly and peaceably. Russell, seeing that the ruffian was not so much as rebuked for his maltreatment to his wife, but, on the contrary, was encouraged in it by Colonel Ames himself, became indignant, and demanded an explanation; and just here the row began which resulted in the death of Colonel Ames and David W. Oxford. And who began it? I ask you, gentlemen, who began it? Who is responsible for it? The next thing, as soon as the altercation began, so says the witness, J. B. Avent, he saw a showman run to the ticket wagon, gather a pistol from a drawer and started back in rapid haste, and said loudly

and distinctly, "I'll stop the d—n row," and just about the time this man got back with his pistol to the side-show, he heard a pistol fire, the ball passing so near over the witness' head that he heard the whizzing of the ball. The next thing was a showman hallooing out loudly for Colonel Ames and his gun-men. The next thing, according to the testimony, defendant, John R. Kelly, was pushed out at the door by a party of men, saying, "You may scare some folks, but you can't scare us." A showman was then seen, according to the testimony, presenting a pistol at the breast of Kelly, telling him he had the advantage of him; he had a Derringer, and if he did not leave the ground he would blow hell through him. Kelly refused to leave and then it was the next firing began. Kelly fired first in the air, next into the ground, after which the firing continued until the showmen retreated under the small canvas.

Now let us take the evidence in detail, beginning at the state's first witness, and see whether or not John R. Kelly is guilty of the high crime of murder. Remember, gentlemen, that the law I have read to you in the language of the Supreme Court is this: "That when a man is assaulted with a weapon likely to produce death he has a right, under the law, to defend himself, and to use any means at his command in his own defense." Now, remember the rule I laid down in the outset and let us see what motive prompted John R. Kelly to act. David Young, the first witness, said he saw a showman approaching Kelly with a pistol, shifting, as he walked, from his pocket behind to his pocket in front. Young remarked, "That man is going to shoot now." If Young, standing at a safe distance, and not in the row at all, thought that this man was going to shoot Kelly, what do you suppose Kelly thought? If Kelly thought the showman would shoot him, did he not have a right to shoot in his own defense? Our law, gentlemen of the jury, does not require a man to wait until he is shot at, or knocked down before he can resent it. He has a right, by prompt action, to prevent a bodily hurt by shooting down his adversary, whenever the surrounding circumstances are suffi-

cient to excite the fears of a reasonable man. Did he, under this evidence, have enough to excite the fears of a reasonable man? If he did, he was justifiable in shooting at the showman; and if, in defending himself, he accidentally shot Oxford, admitting for the sake of the argument, that he did shoot him, he is not, under the law, guilty of any crime. David Young tells you that this showman did approach Kelly and tell him he would blow hell through him, but my brother Irvin says that man was trying to keep the peace. A new way, indeed, to keep the peace. If that is his way of keeping the peace, I would never send him out as a peacemaker. Further, gentlemen, who shot David Oxford? If one of the showmen shot him, Kelly is not responsible for it, as I think I can show you. There was a difficulty between Kelly and the showman. Kelly, as we claim, was acting in self-defense. Who shot first? I say, the evidence, if it shows anything at all, shows that Kelly did not shoot first, and then I say, if he was shot at, he had a right to shoot, as often as was necessary, for his own defense.

Now, there is one thing no one denies; brother Irvin, in all his zeal and vigor in the prosecution, can't deny it; it is this: The first pistol fired by the Kellys was fired by John R. Kelly, pointing his pistol up into the air. Now, take the testimony of Milton Gammage, a man, in my opinion, more likely to have seen this matter just as it occurred than any other man who has been before you as a witness—a cool, deliberate man, not easily alarmed or excited—he tells you that he saw John Kelly when he fired his pistol up into the air; heard several pistol shots before he saw that, but does not know who shot them. Now, gentlemen, you know that John Kelly did not fire those first shots, because all the witnesses say that the first shot he fired was up in the air. Charles Kelly did not shoot, because Mr. Gammage and all the other witnesses say that Charles did not fire at all until John had discharged his pistol two or three times. Now, the question arises, who did the first shooting? All our witnesses tell you the showmen shot first. My brother Irvin tells you, however, they are not

to be believed ; and, if they are not, why don't he bring somebody here that you can believe, to tell you who shot first ; because we say, and the law that I read you says, that if he was assaulted with a weapon likely to produce death, then he had the right to use any means at his command in his own defense. Where are those showmen today ? Why are they not here to tell whether or not they commenced the firing ? None of them were hurt, except Colonel Ames, and, strange to say, he is not represented in this Court by a single relative or friend ; neither has one dollar been appropriated out of his large estate to aid in this prosecution. Gentlemen, that of itself is a significant fact in this case. It shows, gentlemen, that they began this row by encouraging the ruffians who first insulted Mrs. Russell, and, after firing their pistols on the Messrs. Kelly, and finding they had mistaken the courage and bravery of the enemy they had waked up, they retreated ; and so illegal was their conduct on that occasion none of them are here to tell what part they took in the matter. If they were here, gentlemen, let it be for us or against us, you would not be left to grope about in the dark, under the cloud of doubt which overhangs this whole transaction, but you could know from them how it all happened. Our witnesses tell you the showmen began the firing. The state's witnesses tell you they can't swear who began it, and you are bound, as the testimony now stands, to believe the showmen did begin ; for you know they are all cut-throats and thieves at heart, a majority of them, and they go prepared to stand by each other, right or wrong ; and when the call was made for Colonel Ames and his gunmen, they responded promptly and quickly, and they are responsible today for this unfortunate occurrence, and have all fled, as the wicked do, when no man pursueth.

We also proved by three other witnesses that the showmen did the first firing, and whether or not the first or the last firing caused the death of Mr. Oxford is left entirely to conjecture. One thing we do know : Mr. Russell testifies that he was by the side of Mr. Oxford when he received the fatal shot, and that he was on the far side of the canvas from the

shooting; that about the time Oxford was struck with the fatal ball, he (the witness) was in a stooping posture, looking back in the direction of the door to the side-show, and that he saw a showman with a pistol in his hand, in a shooting position, with the smoke emanating from the barrel, proving conclusively that it had just been discharged; and how do you know, gentlemen of the jury, but that that pistol sped the fatal ball which caused the death of David W. Oxford?

But Major Irvin tells you, that Russell is not to be believed, and that he intends in conclusion to utterly demolish his evidence. By what rule can he do that, gentlemen? Up to the second day of November last, no man in this county, not even the gentleman himself, could boast of a fairer name than could Robert Russell, a man of undoubted integrity, perfectly honest and upright in all his dealings with his fellow-man, and truthful in his sayings, and today, for the first time, counsel is urging to be imputed to him falsehood, and that only because his evidence does not come up to brother Irvin's theory of this prosecution. No other witness contradicts him, nothing in his manner of testifying will authorize you to disregard his evidence; and how are you to, when you retire to your room, say on oath that Robert Russell swore falsely, or even that he was mistaken, and did not see what he has solemnly sworn he did see. Now, under this evidence, is it not as reasonable to suppose, yea more reasonable to suppose that Oxford was shot by the man Russell testified about, than to say that the defendant, or C. A. Kelly, whom they say were acting in concert, killed him? If this be true, how can you find the defendant guilty?

Now, gentlemen, I have labored to present to your minds, in as brief a manner as possible, the leading points made by the facts in this case. It is your solemn and responsible duty to weigh this evidence, all taken together, confused and conflicting as it is, reconcile it if you can, so as to make every witness speak the truth, and find a true verdict according to all the evidence—not a portion, but the whole of it. Some of

you may say we can't do that,—the witnesses differ so much we cannot reconcile their different statements. Well, gentlemen, this may be, as has been the case in numerous instances, and under all this evidence I cannot see how it can be otherwise in this case, but fortunately for you, the law, in its wisdom and mercy, has not left you at sea, and should you find yourselves in this predicament it has pointed out your duty and tells you what to do, and that is to find a verdict of not guilty.

Major Irvin has told you, gentlemen, that the law knows no mercy. I am proud to say that he is sadly mistaken about that. The law says where you, after hearing all the evidence on both sides, have resting on your minds a reasonable doubt as to the guilt of the accused, you are bound, under your oaths, to acquit. This, gentlemen, is a copious stream of mercy, found in the law, running in favor of every man, woman or child accused of crime, clearly recognizing the Bible rule, that it is better for ninety-nine guilty to be set free than for one innocent to suffer. You must be clearly convinced, beyond all reasonable doubt, that John R. Kelly killed Oxford, and that he did it with malice aforethought, before you can find him guilty of murder. Gentlemen, the great responsibility of this case rests upon you. By your verdict this unfortunate man is to be returned to his family and friends, or else forever to be consigned to infamy and shame. This is sufficient to make you shudder on account of the task before you.

John Kelly is a young man raised in your midst, a true man, a brave man; true to his friends and true to his country. Wherever the banner of his country waved in triumph, or lowered in defeat, he could always be found as a faithful sentinel at his post of duty. I cannot believe, gentlemen, that he is a murderer or has a murderous heart. He has done wrong, it is true, but if he has committed no crime, you can excuse him for the wrong. We all do wrong, it belongs to our natures to do wrong. Many tears of sorrow have already been shed by this unfortunate young man; the great sunlight of heaven will never again shine upon his pathway as it has heretofore.

no matter what your verdict may be. And I do hope, gentlemen, that you will try this case strictly upon its own merits, regardless of what may be said or done by others, and find it in your own honest hearts to return a verdict in this case returning him to his family and his friends, and let him go his way and sin no more.

MR. WOOTEN, FOR THE DEFENSE.

Mr. Wooten.—That spirit of persecution whose footprints are the graves of its victims, is not yet dead. It lives to add fresh conquests to its record of blood, and it exhibits its Moloch features in the case before you. As a part of the history of this unfortunate affair, it may be stated that the defendant, John R. Kelly, now for the second time within the short space of six months, stands before a jury of his county for murder. It seems to avail him naught that he has already passed through the fiery ordeal and been triumphantly acquitted in a former trial, involving the gist of the transaction now under consideration. You, gentlemen of the jury, have doubtless been impressed with the extraordinary character of this prosecution. The Solicitor General, who is appointed by law to represent the state in such cases, has been, without cause, superseded by able and distinguished counsel, acting under special power from the Governor. That functionary, who is so lavish in the pardon of guilt, very readily engages in the prosecution of innocence.

Why this unusual appointment at an unauthorized expense of the state? Could not this trial have proceeded by the ordinary appointments of the law? Certainly no reason to the contrary has been shown. In keeping with this singular procedure is the bill of indictment in this case. In that multifarious document the state's counsel are not content with charging the prisoner with the murder of David W. Oxford, but it is sought to prejudice an unfortunate man in the estimation of the country by imputing to him numerous offenses for which he is not now on trial. Is it intended thus to outlaw the prisoner? If he were indeed guilty of all these crimes,

tortured by a sense of guilt, and writhing under the rigor and venom of a relentless prosecution, he might, in the language of Cain, exclaim, "My punishment is greater than I can bear." But he would have no reason to expect the same treatment. While the great Judge of Heaven and of Earth, moved by compassion, "set a mark upon Cain, lest any finding him should kill him" counsel for the state evince a disposition to outlaw the prisoner, and to set a mark upon him, so that any finding him may kill him. In view of these facts, and of the spirit manifested in this trial, this may be properly denominated a persecution instead of a prosecution. Under the Mosaic dispensation, when innocent men were pursued by the avenger, they found in the cities of refuge an asylum of safety. From this persecution the prisoner flees to you, gentlemen of the jury, as to a city of refuge, and asks at your hands what he feels assured will be accorded to him, a fair and impartial trial.

The matter submitted for your consideration is a homicide: "the killing of a human being of any age or sex." In order to arrive at enlightened and correct conclusions in the premises, it will be necessary to consider the law on the subject of homicide. According to our law, it is of three kinds: Murder, manslaughter and justifiable homicide. Murder is defined by our Code to be: "The unlawful killing of a human being in the peace of the state by a person of sound memory and discretion, with malice aforethought either express or implied." Code of Ga., 4254. So that we discover that the great distinguishing feature of murder is, malice aforethought, either express or implied. Malice is an essential ingredient, and if it be wanting, the killing cannot be murder.

The next grade of homicide is manslaughter, which is: "The unlawful killing of a human creature without malice, either express or implied, and without any mixture of deliberation whatever." Code of Ga., 4258. If, for example, the killing "be the result of that sudden, violent impulse of passion supposed to be irresistible," then the law, which makes allowance for the infirmities of flesh and blood, relieves it of the guilt

and crime of murder! But, gentlemen of the jury, the killing of one man by another is not always criminal. There is another grade of homicide, and to it your special attention is invited, on account of its applicability to the facts and circumstances of the case before you—I allude to justifiable homicide, which is defined by Code of Georgia, 4264, to be: “The killing of a human being, by commandment of the law, in execution of public justice, in self-defense, or in defense of habitation, property, or person, against one who manifestly endeavors, or intends, by violence or surprise, to commit a felony on either” Here the law speaking in the language of truth, and of humanity, enunciates the doctrine that emanated from the throne of the Most High. It points to a divinity in man which time and transgression have not been able to extinguish. It stands as an imperishable monument of the Bible-taught truth that God created man in his own image. Numerous instances illustrative of this doctrine might be adduced. If an officer kill a man in obedience to the sentence of the law, or by permission of the law; in advancement of public justice, he is not guilty in legal contemplation. Take the case put by Sir Francis Bacon: “If two persons are lost at sea, and get upon a plank, which is insufficient to hold them both, one has a right to push the other off, in order to save his own life.” If the prisoner in any one of the battles in which he was engaged, during the late war, had slain a hecatomb of the enemy it would have been a credit to him as a virtuous and meritorious achievement, bedecking his brow with laurels and making him a hero and a patriot. Upon the same footing of innocence and justification does the law place acts performed in obedience to the stern and inexorable mandates of self-defense. The All-wise Legislator of the Universe has written the laws of self-defense in enduring characters on the tablet of the human mind. Blackstone speaks of it as “the primary canon in the law of nature.” It extends through the animal creation, and is shared by the beast that once discoursed of reason. It is interwoven with the human heart, and there is nothing in the law either of God or man to hinder its opera-

tions. Any effort to do so would be vain and futile. As well might you attempt to quench the light of the sun or to destroy the action of the law of gravitation upon matter.

“’Tis nature’s voice, and nature we obey.”

This is the highest and most potent principle of your nature! Implanted by the hand of God nothing can annihilate it. You value liberty and property, but if you irradiate this law, you destroy the foundation of both. In all ages of the world deeds done in pursuance of its behests have met the sanction of civilized legislations. Our own Code (4269) prescribes that “the homicide appearing to be justifiable the person indicted shall, upon trial, be fully acquitted and discharged.”

Now, gentlemen, having adverted to these general propositions, and fixed in our minds the definitions, which I have read in your hearing, let it be conceded, for the sake of the argument, that it was the prisoner which sped on the fatal ball which produced the death of David W. Oxford. If we examine this case for awhile on that supposition we will find that the evidence places it under the last named grade, that is to say, justifiable homicide. But before we advert to the evidence I propose to read you from the best authorities the law of justifiable homicide, in order that we may view the evidence in the light of the liberal and enlightened views expressed on that subject by the great fathers of the law. And first I invite your attention to Wharton’s American Criminal Law, which is as follows:

“A man may repel force by force in defense of his person, habitation, or property, against one or many, who manifestly intend and endeavor, by violence or surprise to commit a known felony on either. In such a case he is not obliged to retreat but may pursue his adversary until he find himself out of danger. And if in a conflict between them he happen to kill, such killing is justifiable. The right of self-defense in cases of this kind is founded on the law of nature and is not or can be superseded by any law of society. Where a known felony is attempted upon the person, be it to rob or murder, the party assaulted may repel force by force, and even his servant attendant on him, or any other person present, may interpose for preventing mischief, and if death ensue the party so interposing will be justified.”

Russell on Crimes, contains the same doctrine. Also Roscoe's Criminal Evidence. Thus, gentlemen, we perceive, not only the great forbearance of the law, on account of the frailty of human nature, but its high sanctions of the principle of self-defense.

But we hear the complaint that innocent blood has been shed; that whatever may be true as between prisoner and the showmen, deceased was an innocent third party, and it is urged that prisoner's relations to the showmen, even though he was acting strictly in self-defense, cannot avail him. Such, gentlemen of the jury, is not the law. It is true that deceased was an innocent and unoffending man, and I am confident that Job never cursed the day of his birth with more bitterness than does the prisoner the part which necessity—yea, the inflexible dictates of self-preservation—compelled him to take in the unfortunate affair, which resulted in the death of David W. Oxford. If deceased was slain by the hand of prisoner, it was the result of accident. It is not pretended that prisoner sought the life of deceased. Just at this point your attention is called to the law applicable to cases of misadventure or accidental killing. In Wharton's American Crim. Law, we find the following:

"Thus A, having malice against B, strikes at and misses him, but kills C; this is murder in A, and if it had been without malice and under such circumstances that if B had died, it would have been but manslaughter, the killing of C also would have been but manslaughter. Where the prisoner, having had a quarrel with his wife, and aimed a blow at her with an axe, which fell on the head of his infant son, then in her arms, by which he was instantly killed; it being shown that the prisoner was ignorant of the child's position, and was at the time in the heat of blood, seeking to avenge himself on his wife for a supposed injury; it was held that as the case was to be considered as if the wife had been the victim, the same grade of homicide would attach to the killing of the child as it would have done to that of the wife if she had been killed."

So that a misadventure or accidental killing may, or may not, be criminal, according to the circumstances. The shedding of innocent blood does not necessarily attach guilt. A man is hunting in a proper place, and hearing a rustling in

the bushes he takes it to be game, shoots, and by mistake kills his own son, who, without his knowledge, is secreted there. This is a case put by some of the books. It is not pretended that the father, in that case, ought to be punished by law. If a man attack me, with the intention to take my life, and, in order to save my life, I strike at my assailant, but missing my aim I kill another person, the killing would be justifiable, as I had the right to kill my assailant, and the killing of the third person was by accident. From all of which this principle is clearly deducible: that when a person in the performance of a legal act, by accident, takes the life of another, he is not guilty but justifiable. Nor can this principle be affected by the place or circumstances. This same doctrine of self-preservation asserts its omnipotence in all places and on all occasions; and, in so doing, successfully commands the assent of mankind. Suppose a peaceable man is attacked in a public place by a band of demons in human shape, and to save his own life he shoots, but happily misses his assailant, but kills an innocent by-stander, will it be contended that he ought to die, or suffer the penalty of a felon for that act? Although he knew he was in a public place, and might have foreseen the possibility of such a result, yet he is appealed to by the strongest law of his nature, a law that imperiously commands him to consult his own safety, even though it may involve the sacrifice of others. Roderick Dhu's sense of honor was so exalted that he would

"Right the wrong, wherever it is given,
If it were in the Court of Heaven."

In like manner, this law of self-defense asserts its supremacy under all circumstances when life is in peril. To apply this principle to the case before you. If prisoner shot in self-defense, or to prevent a felony upon his person, it was a legal act, or an act which the law allowed him to do; and if in the performance of it, he by accident, mistake, or misadventure, took the life of David W. Oxford, he is not guilty, but justifiable. This being true, gentlemen, supposing the prisoner to

have fired the fatal shot, the case hinges upon the state of the matter between him and the showmen. Did the prisoner shoot in self-defense or to prevent felony upon his person? Let us advert to the evidence to find an answer to this question. In the great volume of evidence in this case, a number of facts altogether irrelevant to the issue have been elicited. I do not propose to tax myself, nor to burden you, with the discussion of irrelevant matter.

From the concurrent testimony of Melton, Kitchings, and Miss Reynolds, it appears, and indeed the fact is not denied, that prisoner, on that day, repaired to the show grounds, as a spectator of a circus performance. It does not appear that he intended or even anticipated a difficulty. On the contrary, this idea is negatived by the circumstance that he took with him his wife and another female friend. These same witnesses, together with Whitten—an intelligent and truthful man—state that prisoner, on reaching the side-show, inquired for the doorkeeper; that worthy presents himself, not with an air of becoming civility, but with a pistol in his hand, on account, perhaps, of the passage with Russell, an occurrence with which prisoner had no connection. Excitement and confusion were prevailing and some of the witnesses who were near-by did not hear the whole of what was said. Two of these witnesses testify that prisoner respectfully asked to be permitted to see a friend who had gone into the show. Thereupon this gallant Sir Knight, who, according to Mr. Irvin, was there as the exemplar of politeness and the champion of the women and children, makes an insulting reply, in effect, charging prisoner with an intention to steal his way into the show. Just here let it be remarked that the prosecution lays stress upon the fact that this circus had paid the usual taxes and that it was properly and legally there. So may it be said that prisoner went in obedience to their invitation, and that he was properly and legally there. And there is no foundation for the insinuation that he intended to steal his way into the show, for he has proven to have bought his tickets. Yet this showman charges prisoner with an intention to com-

mit a theft, and about the same time, according to the testimony of all these witnesses, he seizes prisoner with his left hand, brandishing his pistol with his right, and calling for the "gun-men."

Ah! it appears that these showmen, my brother Irvin's devotees of peace and good order, were armed and equipped for the occasion. They seem to have had their squad, called "gun-men," ready to enter upon the work of butchery at the call of this cut-throat. Two of these gun-men readily present themselves, for these circus men are always ready for fun or fight. Thus we find the prisoner at once surrounded by three men with pistols in their hands. Be it remembered that these are facts sworn to by witnesses, whose testimonies are unimpeached. These witnesses all say that prisoner retreated, telling them that he wanted no difficulty, and imploring them not to "crowd him." That prisoner did retreat is shown, not only by the testimony of the witnesses named, but by that of Mr. Avant, and also that of Mr. Young, a witness for the state. Young swore that prisoner was retreating out of the gangway before this showman, who was advancing on him in a threatening manner, and that prisoner seemed to decline a difficulty. While prisoner is retreating and declining a difficulty, the man in front of him, say these witnesses, is thrusting and pushing him backward, flourishing his pistol, boasting that he could shoot fifteen times, taunting prisoner with cowardice and ordering him to leave the ground, while one of the two "gun-men" presents his Derringer at the side of the prisoner's head and threatens, in his own expressive language, to "blow h—l through him." Let it still be borne in mind that, as to these facts, the witnesses for the defense are uncontradicted, except it be in one or two particulars by Mr. Solomon, who acknowledges that he was present only a part of the time, and that, owing to his deafness, he could illy understand what was said. Not only are they uncontradicted, but they are supported in the material points by Mr. Young, a reliable witness for the state.

Such, gentlemen, is the dangerous position, and such the

threatened surroundings of the prisoner, just at this critical juncture. Now, suppose we were to close the examination of the evidence for the defense right here, and that you should differ from me, and conclude with the prosecution, that the showmen did not shoot first. We will even go further, and adopt for a moment the unwarrantable idea of the prosecution, that the showmen desired peace. It must, however, be confessed that this was extraordinary conduct for men who had gone on a mission of peace. Though you may entertain this view, still, under the facts which we have already passed in review, and under the law applicable to those facts, you cannot find the defendant guilty. I invoke for your consideration, in connection with the view of the case now under discussion, another rule of law—a rule of unquestionable soundness and authority, laid down by all writers on criminal law, and incorporated into our Code (4265), in the following language:

“A bare fear of any of those offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were such as to excite the fears of a reasonable man, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.”

By way of illustration of this rule, I read you, gentlemen, from Wharton's Criminal Law, as follows: “If the apprehension of an immediate and actual danger to life be sincere, though unreal, it is in like manner a defense.” Although this proposition, in its present shape, has been accepted with great reluctance, and in very recent time by the Courts, and should always be applied with extreme caution, it has at all periods been practically recognized. Thus in one of the earliest reported English cases, where it appeared that the defendant, being in bed and asleep in his house, his maid-servant, who had hired the deceased to help her to do her work, as she was going to let her out about midnight, thought she heard thieves breaking open the door, upon which she ran upstairs to her master and informed him thereof, who, rising suddenly and

running downstairs with his sword drawn, the deceased hid herself in the buttery, lest she should be discovered; the defendant's wife, observing some person there, and not knowing her, but conceiving she had been a thief, cried out, "Here they be that would undo us!" Thereupon the defendant ran into the buttery, in the dark, not knowing the deceased, but taking her to be a thief, and thrusting with his sword before him, he killed her. This was ruled to be a misadventure. It was said in *Selfridge's case*, "that when from the nature of the attack there is reasonable ground for a man to believe that there is a design to destroy his life or commit any felony upon his person, the killing the assailant will be excusable homicide, although it should afterwards appear that no felony was intended."⁶ Then, gentlemen, to apply this rule to the case at bar, if the prisoner was surrounded by circumstances such as to excite the fears of a reasonable man, and he acted under the influence of those fears, even though there may have been no actual danger—though the showmen may not have intended to commit a felony, still he was justifiable. Who can contemplate the situation of the prisoner just on the eve of the shooting and say that the circumstances surrounding him were not such as to excite the fears of a reasonable man? If he had the instincts and sensibilities common to men, his gravest apprehension for his personal safety must have been aroused. Then, gentlemen, in this view of the case, you are bound to acquit him.

But, gentlemen of the jury, the part performed by these showmen in the opening act of this bloody drama, does not stop here. Would, for the sake of humanity, that it did. Then would this curtain have dropped, and we should have been spared the appalling scene that followed. But not so. These champions were determined to have a carnival of blood. Armed with such formidable weapons as fifteen shooters, each man a walking arsenal, and with "gun-men" ready to obey the summons—they were prepared for any emergency. They

⁶ *Munroe v. State*, 5 Ga., and *Keener v. State*, 18 G., were here read and commented on, in further illustration of this doctrine.

are "eager for the fray," and not satisfied with bullying and badgering the prisoner, they opened fire upon him. Melton and Kitchings and Miss Reynolds all concur in the statement, that the showmen shot twice at prisoner before he shot at all,—that his was the third fire, while Whitten says he thought from their conduct the showmen intended to shoot and that he turned away for his own safety; that he heard two shots, and looking around, he saw prisoner discharge his pistol in the air. Now, the witnesses for the state agree that prisoner's first shot was in the air. The two shots heard and not seen by Whitten must, therefore, have been fired by the showmen. Avant corroborates this view of the case, when he says, that the first shot passed near him, that the second shot was turned into the ground by a stroke from Charles A. Kelly's hand; that neither of these was shot by the Kellys, and that thereupon he saw prisoner draw his pistol and shoot in the air. And let it be remembered that Gammage and Miller and William B. Oxford were all the same distance away, the intervening crowd obstructing their view; and while they testify that prisoner fired the first shot witnessed by them, they do not positively swear that no shots were fired before they saw prisoner shoot in the air. And just here, gentlemen, we invoke that rule which is so well-founded in reason and settled in law—that positive evidence is to be believed rather than that which is merely negative. The testimony of a witness swearing positively to a fact is to be acted on rather than that of one who does not know of the existence of that fact.

Thus, gentlemen, we have the circumstances under which prisoner commenced to shoot. Was it not time for him to strike in his own defense? Had not forbearance ceased to be a virtue? Could he have had the impulses and feelings of man and endured more? But it is urged by the prosecution that the prisoner had a pistol, and that fact is paraded as a circumstance to show malice. And pray, did not the showmen all have pistols? Was it any more a circumstance of malice in the prisoner than in the showmen? It might be safely asserted that two-thirds of the men present on that occasion had

pistols, yet it will not be pretended that they were all felons. In the cases cited of *Munroe v. State*, and of *Keener v. State*, both men were armed, still they were not on that account condemned. Is the prisoner to be singled out and treated as a felon? Or even prejudiced because he had put himself on a footing of defense against those who made upon him an unprovoked and deadly assault? Again, it is said that the Kellys had an affray to the terror of the good people there assembled. True it is, there was terror, but who inspired it? Not the Kellys! Why, the very first scene in this tragedy was when one of these men, whom my brother Irvin lauds as the champions of the women and children rudely, seized Mrs. Russell and hurled her with such force as would have sent her prone upon the earth, but for the intervention of her husband. Gallant conduct, indeed. Why, we, in this country, have been accustomed to regard tenderness and respect for the gentler sex, as the sublimest feature of our civilization, but it is reserved for these "champions" to trample such considerations under foot, and in doing so they are so fortunate as to have the fine abilities of my brother Irvin brought into requisition for their defense.

The next we hear of this terror is from Mr. Young, who turned and walked away because he believed, from the manner of the man who approached with a Derringer that he intended to shoot prisoner. Whitten tells you that he and the crowd turned off, and that he did so because he believed, from their threats and manner, that the showmen would shoot prisoner. Were not these circumstances such as to excite the fears of a reasonable man? The evidence shows that they did excite the fears not only of prisoner, but the assembled multitude. So, gentlemen, terror and confusion did prevail on that occasion, but it was caused by the conduct of the showmen. Let us for a moment review the savage conduct of these showmen, and the frightful position in which the prisoner is thereby placed. In reply to a polite request, prisoner is accused of an intention to steal his way into the show. From regard to the time and place, he submits to an insult which

under other circumstances, he would have resented. He is then violently seized by a man with a drawn pistol, who boasts that he can shoot fifteen times, commands him to leave the ground, and taunts him with cowardice—a degrading insinuation, which the feelings of a true man instinctively repel. Prisoner endured this insult also, but when his own safety, the preservation of his life, demanded of him to act, he “wrote the falsehood on the crest” of his assailant, and showed him that the man who faced death on the gory plains of Chickamauga was no coward. This ruffian then sounds the slogan by calling for the “gun-men.” They appear with their arms; prisoner retreats; declines the contest; and asks for quarter. One thrusts him back, brandishing his pistol with hideous threats, while another, presenting a Derringer at the side of his head, undertakes to blow hell through him. Not content with these demoniacal threats, and with following up a retreating victim, they attempt his death, by twice shooting at him. I think, gentlemen, you will agree with me, when I say that the prisoner would have been more or less than mortal man if he had not shot in his own defense.

But, gentlemen of the jury, we have argued this case on the assumption that the prisoner fired the fatal shot; that fact, however, has not been proven. It is not pretended that it is sustained by positive evidence. Do the facts proven come up to the requirements of the test rule on the subject of circumstantial evidence? That rule, as stated by the writers on evidence, is as follows: “In order to convict a prisoner on the evidence of circumstances it is held necessary not only that the circumstances all concur to show that he committed the crime, but that they all be inconsistent with any other rational conclusion.” Now, are all the circumstances of this case inconsistent with every other rational conclusion, except that of the guilt of the prisoner? Can we remember the sixteen balls testified to by Avant, and conclude that deceased must have come to his death by one of the five shots by prisoner, and that he could not have been killed by one of the other eleven? But, gentlemen, we have circumstantial and

positive evidence sufficient to produce a conviction, amounting to moral certainty at least, that the prisoner did not perpetrate the killing.

It is insisted by the prosecution that Oxford was shot while the showmen were passing under the canvas. The position of deceased when he fell, and all the witnesses who knew anything of his exit, show that he passed out under the southwestern part of the canvas. Indeed, this is not denied. Now, the witnesses for the state, viz.: Gammage, Clark, W. B. Oxford and Miller, all agree that the Kellys were facing and firing in a southeast direction when the showmen went under the canvas. They, occupying a position northeast from deceased and firing in a southeast direction, could not have hit him. But take the testimony of Young, who, at prisoner's third shot, started home, and having moved in a fast walk about twenty paces, discovered deceased lying about the same distance from the canvas. From this we draw the reasonable and irresistible conclusion, that if deceased was shot while passing under the canvas, as the prosecution admits and contends he was, then he must have received his death-wound during the time, at least, that prisoner was firing the three shots testified to by Young. But that witness accounts for those three shots, showing the first to have gone up in the air, the second down into the ground, and the third in an easterly direction through the picture canvas. So that from this testimony the conclusion is clear and inevitable that, while David W. Oxford must have been wounded during the time of firing of prisoner's first three shots, neither of those shots could possibly have taken effect upon his person. Further, gentlemen, if the jury records of your Court speak the truth, deceased was shot by Charles A. Kelly, who has already been convicted of the offense. But we are told that the prisoner and Charles A. Kelly were moved by a common intent to commit a felony, and that the act of one is the act of both. This seems to be the burden of the prosecution. The evidence does not support that doctrine nor warrant such a conclusion. On the contrary, there is a signal absence of any common design or concert of

action. They did not visit the show together, nor does it appear that they had met on that day, until we find Charles A. Kelly, not seeking to provoke a difficulty in pursuance of a common intent, but actuated by the praiseworthy instincts of a brother, trying to extricate prisoner from a position of extreme peril and to lead him away from the scene of approaching trouble. He was there in the interest of good order. He held forth the olive branch of peace. The peace offering was spurned by the assailants who "breathed out threatenings and slaughter" against their intended victim, pursued their murderous design until the Kellys were forced to act in self-defense. And this is what counsel for the state is pleased to call a case of common intent to commit a felony. There is not the slightest foundation for this theory of the prosecution unless it be the fact that both the Kellys happened to be present. But mere presence, and even participation, is not evidence of a common felonious design. I will, at the expense of being tedious, submit for your consideration some authorities on that subject—authorities which, in view of the evidence of this case, will effectually refute such an argument. And first I will read you, from Wharton's American Criminal Law:

"While all who are present, aiding and abetting him who inflicts the mortal blow in case of murder are principals and criminals in the highest degree, it is not every intermeddling in a quarrel or affray, from which death ensues, that constitutes an aiding or abetting to the murder. If, for instance, two men fight on a former grudge and of settled malice, and with intent to kill, of which the spectators are innocent, and they, of a sudden, take sides with the combatants and encourage them by words, and death ensues, it will not be murder in such persons."

I read you next Roscoe's Criminal Evidence, pp. 213-214:

"So a mere participation in the act without a felonious participation in the design will not be sufficient (1 East P. C. 257, Plumber's Case, Kel., 109). Thus, if a master assault another with malice pretense, and the servant, ignorant of his master's felonious design, take part with and kill the other, it is manslaughter in the servant and murder in the master (1 Hale, 466). Where several persons are in company together, engaged in one common purpose, lawful or un-

lawful, and one of them, without the knowledge or consent of the others, commits an offense, the others will not be involved in his guilt, unless the act done was in some manner in furtherance of the common intention."

The next authority is Russell on Crimes, p. 29:

"If a fact amounting to murder should be committed, in prosecution of some unlawful purpose, though it were but a bare trespass, all persons who had gone in order to give assistance, if need were, for carrying such unlawful purpose into execution, would be guilty of murder. But this will apply only to a case where the murder was committed in prosecution of some unlawful purpose, some common design in which the combining parties were united, and for the effecting whereof they had assembled; for unless this shall appear, though the person giving the mortal blow may himself be guilty of murder or manslaughter, yet the others who came together for a different purpose will not be involved in his guilt."

Now, the evidence shows that the Kellys did not come together on that day with a common felonious design, nor for an unlawful purpose, and hence this theory of the prosecution must fall to the ground. The same doctrine is laid down by our Supreme Court, in the case of *Brown v. State*, 28 Ga.: "Presence and participation in the act of killing a human being is not evidence of consent and concurrence in the perpetration of the act by a defendant, charged as aiding and abetting in the killing, unless he had a felonious design, or participated in the felonious design, of the person killing." The accident that both were present, therefore, is not sufficient. Indeed, if as the evidence shows, they acted in self-defense, or if Charles A. Kelly was acting to prevent a felony upon the person of his brother, as it was his duty to do, then this at once dissipates and precludes the idea and agency of a common felonious intent. But, gentlemen, there is to the prisoner cause of congratulation that we are not left in doubt as to who was the slayer of David W. Oxford. The perpetrator of this bloody deed is declared by evidence unmistakable as it is unimpeachable. In the testimony of William B. Russell the mystery is explained. By that testimony a rift is made in the cloud that enveloped this sad occurrence, and through that rift the bow of promise greets the eye of the prisoner,

and of that gray-haired sire who grief-stricken and oppressed with care, has hovered with paternal interest around this bar throughout all these trials. That old man could not believe that his son, reared as he was in the household of Christianity, and in the atmosphere of piety, could wilfully and maliciously shed the blood of his fellow-man. It would be to contradict the venerable teachings of the wisest of men: "Train up a child in the way he should go, and when he is old, he will not depart from it." He had an abiding faith in the innocence of his boy, and, under the inspiration of that faith, he has from time to time brought him forth to offer him up, if need be, upon the altar of justice, as Abraham was about to offer up Isaac. But, as that patriarch found a substitute to offer up as a burnt offering, so the evidence in this case furnishes a substitute in the person of the man whom Russell saw standing inside the canvas, near the door.

Russell swears that while he was in a stooping posture, holding the canvas for his family to pass out, and while deceased was passing out behind him, hearing a sound as if a ball striking some object near him, he cast his eyes in the direction of the door, where he saw the same showman whom he had met in the entrance lowering his pistol as if he had just fired it, that the pistol was pointing, with a volume of smoke before it, in the direction of deceased and himself.

But this evidence does not suit the palate of the counsel for the prosecution, and that gentleman, with a flourish of trumpets, makes a terrible onslaught on all the witnesses for the defense, and gives us to understand that he intends to devour poor Russell. Ah! has it come to this? Is this the temper of the prosecution: that witnesses, honest men and true, are to have their integrity arraigned and their characters blasted, because, forsooth, they happen to know facts that do not chime in with the bloody theory of the prosecution?

"Upon what meat doth this our Cæsar feed," that he has come to be a destroyer of men, because they happen not to be upon his line of action? I have much respect for the gentleman. I esteem him for his many good qualities of head and

heart, but in this case he exhibits a want of charity that is very much at variance with his uniformly Christian character. I commend him to more forbearance.

Why, gentlemen, we of the defense endeavor to harmonize our action with the spirit of the law, and to make all the witnesses speak truly. We believe that each one told the tale as he understood it, but men, occupying different standpoints, do not see alike. We thank the gentleman for his warning, so that Russell can prepare to meet his fate, or in the language of the gentleman, to be cut up "into chigger meat." It remains to be seen whether the achievement shall "come up to the lofty and sounding phrase of the manifesto." Many of you are personally acquainted with Russell. He is known and respected in the community in which he lives, as a man of truth and veracity. He has no bias in favor of prisoner. On the contrary, the deceased was the brother of his wife. He delivered his testimony with the manner of a man conscious of the truth of his statement.

Again, the mind looks out in quest of a motive for action. In this instance we have the motive. The man standing inside the canvas, near the door is identified as the man who had the difficulty with Russell at the entrance. His passions were aroused. He had a supposed wrong to avenge. Seeing Russell, his adversary, at the opposite side of the canvas, he fires at him and hits deceased, who is by his side. There is a rational solution of the matter.

And you will bear in mind that the testimony of Russell is well supported and corroborated in every material point. The other witnesses agree with him as to the description of the man with whom he had the difficulty in the doorway. Young and W. B. Oxford, and Miller, as well as the witnesses for the defense all swear that Russell with his family and deceased, passed on into the show. Mrs. Russell corroborates him, as to what took place while they were inside the canvas. She, too shows that she and her husband and children, and her brother, the deceased, all passed out under the canvas, about the same time and place, and that deceased discovered the

first sign of his wound as he came out. The character of the wound, and the range of the ball, as testified to by Dr. Price, show that deceased must have received the ball whilst in a stooping posture, all of which supports the evidence of Russell in every important particular. Then, gentlemen, the blood of poor Oxford cries for vengeance, not against the prisoner, but against the showman, who is proven to have been the murderer.

Now, gentlemen of the jury, I have submitted to you the law; for in criminal trials, you are judges of the law, as well as of the facts. I have reviewed the evidence, in the material points at least. But there is one other principle which the law, in its humanity, has adopted for the government of juries in criminal cases. If you have any reasonable doubt as to the guilt of the prisoner, then you are to give him the benefit of that doubt.

This rule is so clearly and succinctly stated by our Supreme Court, in the case of *Mitchell v. State*, 22 Ga. 235, that I read you a portion of the opinion of the Court, as follows:

"After all the exposition by text writers, and illustrations by this and other Courts, the simple rule is, that jurors must not convict without plain and manifest proof of the prisoner's guilt. And that intrusted as they are with the administration of public justice on the one hand, and with the life, the liberty, and the honor of the prisoner on the other, their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves whether they are satisfied, beyond a reasonable doubt, that the accused is guilty of the charge alleged against him in the indictment."

So, gentlemen, this beneficent rule of the law will serve as a beacon light to lead you out of the embarrassment of difficulty and doubt into the haven of safety. You must be satisfied beyond all reasonable doubt of the guilt of the prisoner before you can convict. The State of Georgia does not want the blood of an innocent victim to smoke upon her altars, and hence when there is doubt and uncertainty as to the guilt of the accused the law steps in to absolve him from earthly tribunals and leaves him for ultimate trial by that infallible Judge "Who reigns and rules in the circuit of the heavens."

"Who made the heart? 'Tis he alone,
Decidedly can try us;
He knows each chord—its various tone—
Each spring—its various bias;
Then at the balance let's be mute,
We never can adjust it—
What's done we partly may compute
But know not what's resisted."

Whenever doubts disturb the equipoise of the judgment leave the question to be determined by the Searcher of all Hearts. If you have a reasonable doubt as to any material point in this case, it is your duty to acquit. Here then, at least, the prisoner may anchor in safety. Who can survey the evidence in this case and with his hand upon a heart free from all bias and prejudice, say that he has no reasonable doubt as to whether prisoner fired the fatal shot, or, if he did so, whether or not he was acting strictly in conformity to the dictates of self-defense. If you have such doubts, and have them you must, you will accord to the prisoner the benefit of them; for in such cases the law does not require frail and erring men, who "dwell in houses of clay" to pass harsh judgment on an unfortunate fellow creature.

Then, gentlemen, the destiny of the prisoner is in your hands. He is a young man—just passed the threshold of manhood. All his hopes of future years, the last days of his old father, whose gray hairs are well nigh "brought down with sorrow to the grave," the happiness of his young wife, and the character and welfare of his infant child, all are suspended upon your verdict. That verdict will either restore him to his family or crush with agony their bleeding hearts.

As faithful ministers you will discharge your duty, with reference to the great responsibility that rests upon you. As intelligent men you will not allow your minds to be diverted from the real issue in this case, neither by the ingenuity nor eloquence of counsel. The energy and zeal of the state's counsel are liberally rewarded with the people's money. Such inducements are calculated to incite to extraordinary effort: but you, gentlemen, have no blood-money to urge you to a

verdict of conviction, nor to canker your consciences with a sense of outrage to condemned innocence. Nor will you be frightened from your propriety by the dismal echoes of that hue and cry against the prevalence of crime which proceeds from the mouth of the prosecution. You are not now on a mission to reform the world, and if you were, you could not effect such a purpose by cruel and vindictive punishments. After all, we have to take things pretty much as we find them. We are creatures of a moment. We live out our "brief hour" and pass away, but the world moves on in the mighty course marked out by the great hand of destiny. The first man that was born into the world slew the second. Men in all ages have killed each other, and this state of things will probably continue as long as human nature shall perpetuate its passions, frailties and infirmities. As good citizens, you will exert your utmost in behalf of peace and order. As sworn jurors, you will confine yourselves to the issue of fact submitted for your consideration. You will determine that issue by the evidence construed in the light of those wise and humane rules which the law has established for your guidance. In doing so, we believe that you will find the defendant not guilty of the charge alleged against him. And we are confident that such a verdict would be in consonance with those eternal principles of truth and justice which shall survive "the wrecks of matter and the crush of worlds" and endure in perennial freshness when time shall be no more.

MR. IRVIN'S CLOSING ARGUMENT FOR THE STATE.

Mr. Irvin. Gentlemen of the Jury: My brother Harper, in his opening remarks, very appropriately said that this was "a solemn case." It is a solemn case, gentlemen, and God forbid that I should say or do anything to detract from its solemnity. When a man is upon trial for his life—when even his liberty alone hangs trembling in the balance, it affords food for solemn reflection to all, but more especially to counsel to jurors and to the Judge constituting the Court, which

is to pass upon the issue, involving to him the loss of either life or liberty.

But, gentlemen, this is also a solemn hour, as well as a solemn proceeding. "Night, sable Goddess! from her ebon throne in rayless majesty, now stretches forth her leaden sceptre o'er a slumbering world." The little birds, which but a few short hours ago sang so sweetly in yonder groves, have folded their silent wings and gone to rest amid the branches which they made vocal with their innocent warblings. "The lowing herd" which at nightfall wound "slowly o'er the lea," now chew the cud of contentment and repose in their master's barnyard; their tinkling bells are no longer heard upon the green meadow, or beside the refreshing water. "The plowman," who at eventide "plodded homeward his weary way," now, forgetful of his toil, is locked in the arms of peaceful slumber, and gathering strength from repose for the labors of tomorrow. Your little children, and my little children, have long ere this hour lisped their evening orissons at their mother's knee and "laid them down" to that sweet refreshing sleep which innocent, happy, blessed childhood only can enjoy. No thought or dream of tomorrow's duties or responsibilities can disturb their calm repose. My own wife, far away, does not expect my return this night, but even at this late hour your helpmeets at home may be listening in expectation of your coming, and wondering why your accustomed step is not heard in the silent hall.

"Silence, how dead, and darkness, how profound! Creation sleeps." Yet, gentlemen of the jury, "tired nature's sweet restorer, balmy sleep," comes not to your eyelids, nor mine—and why? Simply because we have important duties to perform—duties which involve not only the life and liberty of our fellow-man, but which also involve the best interests of society; duties which, though onerous, must be performed by us. If we perform them in the fear of God; if we rise superior to our poor, depraved, fallen natures, and asking divine guidance and direction, follow where it leads and conscientiously perform our allotted tasks, it will be well with us, well with

society, and well with our state, whatever may be the result of our labors as affecting the interest of the prisoner at the bar.

Why do we see this court room crowded with spectators this night? Why is so much interest manifested in these proceedings? Why has so much time been consumed in this investigation? A stranger might inquire, "What is all this about?" I answer, On the 2d day of November, in the year 1870, a bloody tragedy was enacted in this county and town. Bills had been posted announcing that a show would be here on that day, but this part of the performance was not on the bills. Two human beings were hurried into eternity; one of them, David W. Oxford, a simple spectator, innocent of any offense against the laws of his country; with his tender delicate child in his arms, anxious for its safety, attempts to get beyond the reach of murderous bullets; in the act of doing so he receives the fatal shot, and falls with his arm still firmly clasped around the little helpless one, as though even in death he would shield it; and in dying, covers it with his heart's blood, which gushed in crimson torrents from his mouth. We are here to inquire, how he came to his death: by whose hand he fell, and bring his slayer to punishment.

John R. Kelly, the prisoner at the bar, is accused of his murder, and is now on trial. His counsel, my brethren, Harper and Wooten, have both made earnest, eloquent appeals to you in his behalf, and have asked you to hear his wife, his child, his father, and his mother, pleading for a husband, a father, and a son. Had I the power of the autocrat of all Russias tonight; could I, by a single word of mine, say to his guards, "Loose him and let him go," I would turn to that mother and say to her, "Take your son back again to your embrace." I would say to that old gray-haired father, "Receive your boy." Oh! would that I could say, "Innocent and pure, as when you first received him from his mother's arms." I would say to his gentle, tender, loving wife, "Take your husband; throw around him the mantle of your own purity; shield him by your love, from further harm; may he

profit by this sad, sad lesson, and 'go and sin no more.' " It would afford me infinite pleasure to do this, and to also gladden the heart of that "little prattler" counsel have so eloquently pleaded for, and say to it, "Take your father back to his home and your love, and from this good hour may he be to you what nature intended he should be—a faithful monitor, protector, guardian, and friend." But, gentlemen, I have not that power; neither is that power lodged in you, or in the Judge upon the bench. I have no doubt, but as men, you sympathize with the prisoner, his family and his friends, but as jurors, you must be strangers to that feeling. I thank God, that, as a man, I do feel a sympathy, warm and heartfelt, for any of my race in affliction—although that affliction may be brought upon them by their own fault,—yet, as a lawyer, as counsel for the state, to uphold her dignity, and to vindicate the majesty of her laws, I must say to sympathy, "Get thee behind me!" I must know nothing; I must yield to nothing but Duty—stern and inflexible duty; and you must be influenced by the same feelings, as I know you will be.

If sympathy could influence us, gentlemen, our sympathies might be excited adverse to the prisoner. I have seen another aged father, whose hair is silvered over with the frosts of sixty or seventy winters, watching with intense interest the result of this trial. He has been deprived of the prop and stay of his declining years; his first-born, perhaps, has been cut down in the pride of his manhood, when life was just putting out before him her most alluring charms and beckoning him on to wealth and happiness. One, who a few short months ago, was a happy wife, looking forward to many years of companionship with him whom she had chosen for a partner in life's journey, who now mourns, in sadness and desolation, over the loved and lost. That helpless little child has been deprived of the strong arm of its father to shield and defend it, of his succor and support in tender infancy, his guidance and direction in its maturer years. Instead of the cheerful home, the wife happy in the love of her husband, and the prattling child basking in the sunshine of its father's presence, there is a

desolate hearthstone, from which the passing breeze sweeps away the wail of the widow and the cry of the orphan, mingled with the moans of anguish, wrung from the breast of the gray-haired sire. Let their voices, as well as the stern mandates of a violated law, be heard, in connection with the pleadings of the prisoner's wife, child, father and mother, to which counsel for the defense have so eloquently directed your attention. But heard, only, to counteract sympathy for, not to excite prejudices against, the prisoner.

My brethren for the defense have advanced many specious arguments; they have alternately assailed the citadel of your sympathies, your passions and your prejudices; sometimes during their arguments I was at a loss which most to admire, their eloquence in their appeals to you, or their adroitness in distorting the evidence, and in trying to "make the worse the better part appear." I admire the skill of advocate, while I condemn its exhibition in a case like this. Truth, eternal, immutable truth, is the object of our search. I join my brother Harper most cordially in his invocation to you; he told you to "put this case into the crucible of truth," and so say I. Apply to this volume of evidence—not the evidence of the gentlemen, for they commented on much as evidence that was not evidence—but the evidence of the witnesses as given from the stand, the fires of an enlightened reason, and of a just and impartial analysis. Let the dross of falsehood, if any there is, be consumed, and the pure gold of truth alone remain, to influence your judgment in making up your finding. I want no facts, before you gentlemen, of my own manufacture. If the evidence of the witnesses does not convict this man, in God's name, I say, acquit him! And, when I come to the testimony, I ask the gentlemen, as a favor to me, to correct me if I misquote it, or tell you that anything is in evidence which is not. But, gentlemen of the jury, my brother Wooten, in his zeal for his client, saw proper to taunt me as the representative of "Mr. Bullock, the man who pardons crime with a lavish hand," put persecutes instead of prosecutes the prisoner at the bar. I am not here as the represen-

tative of Governor Bullock, but as the representative of our good old mother, the State of Georgia. 'Tis true, she is my adopted state, but none the less dear to me. For more than twenty-eight years she has afforded me the protection of her laws; over twenty years ago, on the morning of the first day of my marriage, she opened her arms to welcome her I called wife—dearer to me than all the world beside. My children have been born on her soil, and she is to them their natural political mother; she has afforded them and me the means of subsistence, and the blessings of liberty, home and friends. All that I am, and have, and hope to be, I owe to Georgia—God bless her! Ten years ago, when her honor was assailed, and her equality in the Union denied, she called upon me to buckle on my sword and go forth in her defense. I went in obedience to her call, and on the soil of the Old Dominion met those she then called her foes, leaving to her protection during my absence my wife and little ones. I returned, and found she had been true to her trust; they had all been kept in safety, “under the shadow of her wings,” and by the blessing of the Almighty. She has called upon me now to appear in vindication of her laws, and to uphold her majesty and dignity. When Georgia calls, I ask not who controls the seal of her Executive Department; when her Governor speaks, in the line of his duty, she speaks, and I obey! Palsied be this good right arm when I refuse to wield it in her defense, and lifeless be this tongue when I cease to use it at her bidding, in vindication of her honor, or to uphold and maintain her laws. Then, I throw to the breeze this night the proud banner of the State of Georgia, inscribed with “Wisdom, Justice and Moderation,” and I ask you, gentlemen of the jury, to adopt her motto as your motto. Be Wise in your councils, Moderate in your deliberations and Just in your conclusions.

But the gentleman has also taunted me, and sought to excite your prejudices against me, while commending my zeal in the prosecution, by accusing me of working for “blood money!” Is it a crime for me to work for my state? If, at her bidding, I try to bring murderers to justice, am I

to be taunted with the cry of "blood money"? Our good old mother is no niggard, I expect to be paid for my services, and you will say—all will say—that I ought to be paid, if I do my duty, I ought not be paid; I do not deserve to be paid, if I do not do my whole duty. I have in "my zeal," which the gentleman has been pleased so graciously to commend, but to so intermix with covert censure as to destroy the value of the commendation, tried only to do my duty, and nothing but my duty. "The laborer is worthy of his hire," says the book of all books, and does my brother Wooten gainsay it? Is he not a feed counsel? Does he not work for pay? Is he any the less worthy, because he expects compensation for his services to the prisoner? All I have to say is, that if he is not paid, he ought to be, and he expects to be, and he will be. Then why this attack upon me? If I sought pay for services not faithfully rendered, I should not only be liable to censure, but absolutely dishonest and deserving of the anathemas of every honest man. In my opening remarks, I was particularly careful to say nothing calculated to excite prejudice against the prisoner. I did hope the gentlemen would emulate my example, and argue the case calmly, upon the law and the facts, without trying to excite prejudices or passions in your breasts. I always feel shocked, when I hear counsel representing the state uttering invectives against a poor unfortunate prisoner on trial. Such appeals are beneath the dignity of a great state, and when I hear them made, I feel that the mantle of justice is trailing in the dust. Counsel have assailed me, have assailed the Governor, have assailed the showmen, by calling them "cut-throats," "thieves and scoundrels," and myself in connection with them, by calling me "their champion"! As if to provoke me to descend from the lofty eminence upon which I placed myself in the opening of this case. But, gentlemen, nothing shall move me from my purpose. I defy all their taunts. Nothing shall tempt me to utter one word of invective against the prisoner at the bar, except such just and legitimate conclusions as I may draw from the evidence in the case; and then, not in anger, and not in bitterness towards

him. He stands before you this night pure and innocent as the babe at its mother's breast, unless this volume of evidence shall justify you in stripping from him the robe of innocence and clothing him in the garb of a felon. Until your verdict is pronounced, every hair of his head is sacred!

But you have been told that I shall tell you of "crime rampant in the land," and the necessity of its suppression. There is no evidence before you, of any other crime having been committed in all the land, save this one. Then, for the purposes of this trial, I tell you to consider, that David W. Oxford was the only person ever killed by violence in Terrell County. If the prisoner is responsible for his death—judging him by the evidence and by the evidence alone—in manner and form as charged in this indictment, so find him; if not, so find, and I shall be satisfied.

But the bill of indictment has also been assailed before you. My brother Harper says, it "charges prisoner with killing Ames, shooting the Albino woman, carrying concealed weapons, carrying weapons, raising a riot, and an affray." My brother Wooten has been pleased to call it "a multifarious document," not only "charging the prisoner with the murder of David W. Oxford, but it is sought to prejudice an unfortunate man in the estimation of the country by imputing to him numerous offenses, for which he is not now on trial," and then asks with Websterian emphasis, addressing me instead of the jury, "if it is intended thus to outlaw the prisoner?" Well, gentlemen, all the reply I have to make is, that this is the first time I ever knew exceptions to a bill of indictment taken and argued before a jury. I have always been taught that the Court was the proper person to hear and determine all such questions. As they took no exceptions before the Court, I congratulated myself with the hope that the pleadings were all right. It seems that I was mistaken. Well, I suppose I "must live and learn," but it has remained for the gentlemen to teach me a lesson I have never learned from the books! The bill of indictment, gentlemen, is simply an accusation, made by the Grand Jury, without which no man

can be placed upon trial for his life. The state charges that this crime—the murder of Oxford—was perpetrated under aggravated circumstances; that it differs in its main features from ordinary cases of homicide, and it is not only right, but is an act of mercy to the prisoner to put him upon notice of those aggravating circumstances which the state intends to use against him. Again, the state can prove nothing but what it charges. If there are peculiar circumstances, under which a crime is committed, which add to its enormity, those circumstances should be distinctly set out in the indictment. And that is just what we have done in this case. Our last Legislature, in view of the many homicides resulting from men going armed to places of public gathering, sought to remedy the evil by prohibiting the carrying of arms, either concealed or openly, to any public gathering of the people, except to militia muster grounds. It was, therefore, an aggravating circumstance in this homicide, that these men, went to a peaceful assemblage “of the people of this state” armed, not only in violation of, but in defiance of the law, which commanded them not to do so. It was also an aggravation of their offense that they commenced “an affray, in a public place, to the terror of the citizens and disturbance of the public tranquility.” You are not trying them for either of those minor offenses, however, but you are to take the facts, proving the commission of those minor offenses by them, into consideration, in connection with the facts proving the commission of the homicide by them, if proven, as circumstances of aggravation, and as going to establish the charge of malice, the main ingredient in the crime of murder. I pronounce no judgment of outlawry upon the prisoner, further than his acts outlaw him. He does not deny that he went there armed! But they say, “the law is unconstitutional”! “that the constitution gives to every man the right to bear arms.” I may add that this is the first time I ever heard the constitutionality of a law assailed before a jury. It is your duty to obey and enforce the laws, not to make or unmake them. Their constitutionality must be passed upon, and if void, declared so by a different tribunal. But I say

that it is not only a constitutional law, but a good law, and if it had been obeyed by the prisoner on the 2d day of November last, he would have been spared the anguish of "Cain," to which allusion has been made, and you and I the tedious and laborious duties which we are now performing; the country would have been spared the expense of his trial, and the public the shock occasioned by this "carnival of blood," resulting from the violation of this "little law" as it has been in the argument derisively termed.

But they say, "The showmen were armed, and I, their champion, do not condemn them!" The showmen are not on trial, gentlemen, and I am not their champion, but I am prepared to show that they were not guilty of violating this law on that day, by being armed at that time, and, under the circumstances as developed by the evidence. You and I, and every man, have the right to keep arms at our homes, for the defense of life, family, guests and habitation. The offense is, "having and carrying about the person any dirk, bowie-knife, pistol, etc., or any kind of deadly weapon, to any court of justice, or any election ground or precinct or any place of public worship, or any other public gathering in this state, except militia muster grounds." Until the doorkeeper was assaulted and driven away from his post by Russell, with his pistol drawn, and threatening to shoot him; until the two Kellys took part in the difficulty, and John R. had his pistol also drawn, no showman was seen with a pistol; they went off and got them; they did not have them on their persons. The first pistol in the hands of a showman seen by any of the state's witnesses, was a small Derringer in the hands of Colonel Ames; where did he get it from? Avant, one of the witnesses for the defense, tells you, "he got it out of a drawer in the ticket-wagon!" He kept arms for defense, not offense; just as you have a right to keep a pistol in any drawer in your house, to defend your habitations against burglars, or your person or family against any one seeking to commit a felony upon either. Ames, having complied with the law imposing a tax upon such exhibitions by the payment of \$25.00 to the state, and \$25.00

to the town, had a right to be just where he was; that show-ground on that day was his "castle," as much so as either of your houses where your families reside is yours, gentlemen of the jury. It was also his right to defend himself and his servants when assailed in the manner they were; it was his solemn duty, enjoined by all the rights of hospitality, to protect and defend the helpless women and children, and other guests who had assembled there on that day to witness the performance. The danger to women and children was the first thought that entered the mind of the lamented Ames; hear him in the language of one of the witnesses, addressing the assailants, "put up your pistols, this is no place to raise a row—you will scare the women and children, but you cannot scare us!" But no! appeals to them upon such grounds fell upon ears deaf to the pleadings of humanity; much less could they be moved from their purpose by a suggestion that they "would scare women and children?"

But my bother Wooten refers to the difficulty between Russell and the doorkeeper, and clinging to Russell's history of that transaction with all the tenacity of a drowning man to his last plank, exclaims with well-feigned indignation, that "the very first scene in this tragedy was, when one of these men, whom my brother Irvin lauds as the champion of the women and children, rudely seized Mrs. Russell and hurled her with such force as would have sent her prone upon the earth, but for the interference of her husband. Gallant conduct indeed!" he cries. Well, I will pay my respects to Mr. Russell after awhile. I will only say now that Russell's evidence upon that point is not only wholly unsustained and uncorroborated by any other witness, but contradicted by every other witness worthy of belief. Young said, that "Russell had his pistol drawn on the doorkeeper; that the doorkeeper had his hand extended towards him, offering friendship, apologizing and saying he had intended no insult. Mrs. Russell at the same time having hold of her husband and trying to prevail on him not to have a difficulty." Miller says that "as he passed out of the side-show, Russell had his

pistol in his hand, punching the doorkeeper in the breast and threatening to shoot him; that Mrs. Russell had hold of Russell; that the doorkeeper had his hand extended, with money in it, offering friendship." Strange that Mrs. Russell should have been so anxious to keep her husband from shooting the doorkeeper if he had just previously so rudely and so grossly insulted her? Solomon corroborates both Young and Miller, and says further, that Russell not only had a pistol, but that he fired it in the melee. And yet, both Russell and Mrs. Russell swear positively, that he did not have a pistol! If his memory is so treacherous on this point, is he to be believed on the other, uncorroborated and unsustained by a single uninterested witness? As to Mrs. Russell, it is natural that she should try and sustain her husband. Gentlemen, is she not also completely under his influence? She sees just as he would have her see. She is a part of himself. But, gentlemen, even her evidence, taken altogether, does not sustain him. You will remember that on some points there was a wide difference in their version of the whole affair. Unfortunate wife! She ought not to have been brought into Court, to prop up the testimony of such a witness. But I say that if the doorkeeper had rudely pulled or pushed Mrs. Russell, as the counsel would have you believe, while his conduct would have been highly reprehensible, even in the opinion of one whom the counsel has been pleased to dub as his champion, he offered an humble apology for the act, which should have been received as satisfactory; and if not sufficiently so, I say that was not the time nor the place to have avenged it. And I maintain, further, that the prisoner, John R. Kelly, is without a shadow of justification, for his interference in a difficulty of Russell's own seeking, in such a place and at such a time! Aye, he would have been without excuse for his acts on that occasion, at any place or at any time. 'Tis true, they try to make it appear that he was also insulted and bullied by this "ruffianly doorkeeper," who, according to my brother Wooten's theory, "was eager for the fray," and thirsting for "a carnival of blood!" but I will show you, gentlemen, when I come

to the evidence, and demonstrate to your satisfaction, that such was not the case. They would have you believe that this man who was so prompt to "write the falsehood on the crest of his assailant," was insulted by the showman, in response to a polite request," that he might see some one inside the show. But unfortunately for him, the same witness, or one of them, upon whom he relies for this plea of justification, says that John R. Kelly bought tickets to take his family into the side-show! Then, if he had bought the tickets to go in, why did he not go in, instead of asking the doorkeeper "to let him pass in, to see a man inside?" Ah, gentlemen, that theory won't do: John R. Kelly came to that door to take up the difficulty the valiant Mr. Russell had so unnecessarily commenced. "The man who faced death on the gory plains of Chickamauga was no coward!" says his "champion," my good brother Wooten. I do not believe that either of the Kellys are cowards, but it is painful to contemplate brave men, assailants, firing upon men who are not trying to return their fire; one of them down on the ground, wounded, and with his back to them, doing nothing, except trying to escape under the canvas, out of their sight, but not out of danger!

It does seem that brave men would have thought of the danger to the innocent spectators, inside the canvas, while they were emptying their pistols at the showmen in the direction of the canvas! The evidence clearly demonstrates, that David Oxford received his death wound, just at the time the showmen were going under that canvas, and at the proper time, I will also demonstrate to you, that the ball which produced his death, was sped upon its fatal errand by none other than John or Charles Kelly. Then, according to their theory, if the showmen commenced the assault, and it was necessary for the Kellys to return the fire, that necessity no longer existed; their foes were retreating, and their own safety was already secured.

But the gentlemen for the defense both say, that in my opening argument, I made a terrible onslaught on all the witnesses for the defense, "and with a flourish of trumpets gave

them to understand, that I intended to devour poor Russell!" Ah! what witness did I assail? Whose name did I mention? You will bear me out in the assertion, that I called no name. Some of the defendant's witnesses, I said, "I would give the charity of my silence, and leave to your minds the impressions produced upon them, by their evidence as detailed from the stand." That was about the sum and substance of what I said, except that their evidence was contradictory, while the evidence of the state's witnesses was entirely consistent and harmonious. I said further, "that there was one witness, I intend to pick, until there would be no meat left on the skeleton of his evidence." I was particular not to call any name. Then, have they not judged their own witness, by singling him out from the "cloud of witnesses?" Did he not, like Satan, "above the rest in shape and gesture proudly eminent, stand like a tower?" "As Nathan said unto David," did they not say unto Mr. Russell, "thou art the man!" And yet, forsooth! I am asked, "Upon what meat doth this our Caesar feed, that he has come to be a destroyer of men, because they happen not to be upon his line of action?" My brother Wooten "commends to me more forbearance," does he? If Mr. Russell is "destroyed," I can say to him truly, "Shake not your gory locks at me, thou canst not say I did it." "Your own 'champions' have judged you!" and by so doing, gentlemen of the jury, they have thereby saved me much of my allotted task. My brother Wooten says, "If the records of your courts speak the truth, deceased was shot by Charles A. Kelly, who has already been convicted." I did not intend to allude to that fact, because not in evidence, but as it is admitted, I will notice that admission in passing. I did say, and I still say, that the evidence shows, that John R. and Charles A. Kelly were moved by "a common intent," from the moment of time when he drew his pistol, and fired his first shot, until the curtain fell upon the bloody tragedy, in which they were the chief and only actors. Although Charles A. Kelly has been convicted, in my opinion, he is more deserving of sympathy, because less guilty than John. The evidence demonstrates, that John first

got into an altercation with the showmen, and first drew his pistol, and fired the first one, two, three shots. Charles first appears upon the scene as a peacemaker. Clark meets him inside the show and shakes hands with him. He hears the noise at the door, occasioned by his brother, in angry dispute with the showmen, and comes out. He takes hold of John to get him away, which is conclusive evidence to my mind, that he saw and knew John was in the wrong. Why did he not continue to act as a "peacemaker," and thus secure to himself the blessing promised to the peacemaker? If he had done so, we should not have been here this night. Bear in mind now, the principle of law I read you in the opening of this case, where men went to rob a gentleman's park; they all united in an assault upon the gamekeeper; their common design was to steal game; so far as that crime was concerned, they were all alike guilty; but one of them, after they had wounded and disabled the gamekeeper, without the co-operation of the rest, went back and robbed him. It was held, that so far as the robbery was concerned, he alone was guilty. It is the common design, the intent in the minds of all, to do a certain thing forbidden by law, that makes all the participants equally guilty. Well, after Charles saw that John was bent on murder, that nothing but blood would satisfy him—and that intent on the part of John was evidenced to Charles "by external circumstances capable of proof," to-wit, the firing of his pistol, at, towards, and upon the showmen—and Charles joined him, and co-operated with him in that intent, by doing the same thing, by the use of "a weapon likely to produce death," and in a manner calculated to produce death, I care not if the thought entered his brain but one single instant or moment of time previous to his firing of his first shot, there was a common intent in the breast of each, evidenced by the acts of each. Both were trying to kill. Both without justification. Both did kill—for the act of one was, in law, the act of both,—"when all the circumstances of the killing," in the language of our Code, "showed an abandoned and malignant heart," and both are alike guilty. Then, the conviction of

Charles upon the same bill of indictment, insures the conviction of John upon the same evidence. If it was murder in them to kill Ames, or voluntary manslaughter, "in the heat of passion and in the commission of an unlawful act," then it could not be misadventure to kill Oxford at the same time. And I want no authority in support of my position upon this point, better suited to my purpose, than that used by Mr. Wooten against it, viz.: Russell on Crimes, p. 29; which applies, in the language of that authority, "only to a case where the murder was committed in prosecution of some unlawful purpose; some common design, in which the combining parties were united." It does not matter whether they came to town on that day with murderous intent or not in the breast of each; if they had that intent in common, at the moment it is evidenced by shooting in concert at the showmen, it is sufficient. The presumption of malice on their part is strong, because "they came to the place armed and ready for any emergency"; it is still stronger against them from the fact, that they used their arms thus provided in a public place, where hundreds of persons, men, women, and children, were assembled, in reckless disregard of their presence and exposure. The law brands men who thus act, "as enemies of their race," with malice towards all, and charity or love towards none. If he who carelessly throws a brick or stone from the scaffolding of a building, in a public place, kills a passer-by, without any intention to do so, is a murderer, of what lower grade of crime can one, who like the prisoner at the bar, shoots into a crowd, in a public place, intending to kill, be guilty of?"

My brother Wooten has brought a venerable book into Court tonight, the best law book and the first law book ever written. I am glad he has brought it. I believe in it. One of the laws in that book, which I contend his client has violated, was promulgated by the Almighty amid the thunderings of Sinai, "Thou shalt not kill!" I think my brother has been unfortunate in his selections from that book, and in their application. His allusion to Cain may do, because Caine

was the first murderer. He has read you from that book about the trial of Abraham's faith in the offering of Isaac, by the command of the Almighty, and compares the aged father of John Kelly to that venerable patriarch, in that he has come up here, Court after Court, to offer up his son, by command of the law. Unfortunate comparison! under the facts of this case. There is another father and son, whose history is given in that book, much more appropriate in its application to these facts—David and Absalom! Isaac was a good boy, and had never transgressed God's law, nor wrung his father's heart with anguish; he was as pure and spotless as the innocent lamb, and hence an acceptable offering for sin; from him and his seed all the world was to be blessed in the babe to be born in Bethlehem. Absalom, on the contrary, was a bad boy; he slew, or caused to be slain, his brother! He made war against his own father, and took his kingdom from him; he wrung David's heart with untold anguish, yet, notwithstanding all, David still loved him! The paternal heart still yearned over his erring, wicked son, and when he heard that Absalom was slain, he exclaimed, "O, my son Absalom! My son, my son, would God I had died for thee!" And such I apprehend, is the feeling of old Mr. Kelly; though his boy has erred and wrung his heart, and brought sorrow upon his declining years, he still, like David, loves him! O, how strong, how enduring, is a parent's love for their offspring! But, according to my brother's theory, this aged father will "find a substitute for his innocent boy, so unjustly 'persecuted,' in the person of the man whom Russell saw standing inside of the canvas, near the door!" Don't you know that the man with the black moustache and the broad face, soft hat with the wide brim, sorter mixed coat with the collar turned down, with a Colt's five-inch in his hand, was an afterthought of Russell's, fixed up to fit this case, and to acquit the Kellys? If not, I ask, why was not that man arrested? Did he not stay in the place all day, after Oxford was killed? Ah! gentlemen of the jury, that subterfuge won't do. You know and I know, and the honorable gentleman himself knows, that if

it had been a fact that that doorkeeper had killed David Oxford, he never would have gotten away from this place alive. "If the blood of poor Oxford cries for vengeance, not against the prisoner, but against the showman," I ask the gentleman why he has not been brought forward and tendered "as a substitute"? You know that if the showman was guilty and had escaped, they would find him, if he was on the top of this green earth.

I say also with the eloquent advocate; "the State of Georgia does not want the blood of an innocent victim to smoke upon her altars"; she does not want the showman punished for a crime he never committed. Nay more, she does not want the blood of any "to smoke upon her altars." Our good old mother, the state, would prefer that all her children should obey her laws, and live together as the children of a happy household, in peace and love. She sets her laws before us, and kindly, but firmly, tells us we must obey them. If we set up our will and our own law in opposition to hers, and thus incur the penalty of disobedience, we must meet the consequences. She said to John R. and Charles Kelly, on the 2d day of November last, "You must not go to that show-ground with arms on your persons!" She said to them further, "You must not engage in an affray." She said to them further, "You must not kill any of my children, if you do I will punish you!" She intends these laws for our good; the best interests of society are involved in an implicit obedience to them, and all other laws for the preservation of peace and the safety of the citizen. In violation of law, they were here on that day. But, says the gentleman, "were they not invited here by the showman? If invited, were they not here lawfully?" They were not invited to come and bring pistols, "deadly weapons," with them, nor to come prepared to use them with such deadly effect; the showman had no right to invite anyone to violate a law of the state! When the state imposed a tax upon shows, she thereby recognized them as lawful, and she promised to throw around them, while on her soil, the mantle of her protection. For, gentlemen, however much private citizens

may disagree as to the propriety of attending such exhibitions, all states and statesmen encourage amusements for the people—and some states provide them at the public expense—upon the principle,

“That all work and no play,
Makes Jack a dull boy.”

By the payment of the tax imposed by law (as I have before said), Ames' circus was lawfully here on the 2d day of November last. By carrying pistols on their persons, on that day, John R. and Charles A. Kelly were here in open violation, and in defiance of law! In other words, they were unlawfully here.

But time admonishes me to hasten on. I cannot stop to answer all the arguments of both the learned gentlemen for the defense. With the most of their authorities I agree. We only differ as to their application to the case at bar. My brother Wooten reads and comments at length upon the case of *Keener v. State*, 18 Ga. 194. Why, gentlemen of the jury, there is no analogy between that case and this. Reese went to the house where Keener was—“his castle” for the time being—breathing out “threatenings and slaughter against Keener.” Counsel read you how he went to the door and kicked upon it, and called to those within, “Bring out your d—d Keener”; he raised a stick over a woman's head and told her “if she did not bring out her man Keener he would kill her”; he had threatened Keener's life and those threats had been communicated to Keener. Reese was a desperate man, and Keener had enough to “excite the fears of a reasonable man.” Reese, undoubtedly, intended to commit a felony upon the person of Keener, or, at least, Keener had good cause to so believe, and hence the reason, for the Supreme Court's reversal of the judgment of the Court below in that case. The case of *Munroe v. State* is in the same category. There are some men on this jury who lived in Lee County at the time, and know all about the facts of that case. Dr. Ragan, I know, recollects it. Munroe was one of the most

peaceable of men. Macon, on the contrary, had the reputation of being one of the most desperate of men. Dr. Munroe was a member of the Inferior Court of the county, and, as such, had, in his official capacity, ordered suit to be brought upon a bond which Macon had given as County Treasurer, and thus, being a leading member of the court, he had incurred the enmity of Macon. Macon had threatened his life, and those threats had been communicated to Munroe. Not only he, but every one else who knew the desperate character of the man, believed he would, if opportunity were given, execute those threats. Well, Munroe endured, and hid, and skulked, until life became a burden, and until the dread alternative was impressed upon his mind, and convinced his judgment that he must either kill Macon or surrender up his own life. You know how he killed him—he shot him from an ambush, but when he shot, Macon was hunting for him, with his rifle on his shoulder and the triggers sprung! Macon was a good shot, and as quick as the lightning's flash, and hence Munroe had good reason to believe that his life depended upon his shooting Macon in the way he did. He had sufficient cause, in the language of all the authorities, "to excite the fears of a reasonable man." If he did not, in fact, have, there was, at least, cause enough to raise a doubt, and he was entitled "to the benefit of that doubt."

Counsel for defense have stated the rule correctly as to circumstantial evidence. I do not think, however, that this case depends upon circumstantial evidence. I think I shall be able to demonstrate to you that the evidence establishing the guilt of the accused is of the most direct and positive kind. I agree with them also, that if there be a "reasonable doubt" upon your minds as to the guilt of the prisoner, it is your duty to acquit him. But bear in mind, that the doubt which would justify you in acquitting him must be a reasonable one, not a capricious, uncertain doubt, having no foundation in truth. It must not be the creature of your own imagination, conjured up by your own brain, for the purpose of giving you a pretext to acquit. The doubt must be raised in your minds by

a lack of evidence sufficient to produce conviction, either as to the commission of the crime itself, or as to the identity of the person committing it. You must be satisfied from the evidence, beyond a reasonable doubt, that either John R. or Charles A. Kelly produced the death of David Oxford, in manner and form as laid in the indictment, or you cannot convict the prisoner.

But, gentlemen, the lateness of the hour reminds me that I must hasten to a conclusion. I have endeavored to answer some of the arguments advanced by the gentlemen for the defense. I cannot without wearying your patience advert to them all, as I hope I have shown you that those most plausible are utterly wanting in merit, sufficient to support the plea of innocence, when we apply the test of facts and the law as applicable to this case.

Having given you the law in the opening of the case, I shall not advert to it again. I simply ask you to keep the legal principles I there laid down firmly fixed in your minds, so that you may apply them to the evidence as we proceed to examine it, which I shall now do as briefly as possible.

The first witness sworn for the state was David Young. But, before we commence our comments upon the testimony of any of these witnesses, I want you to get firmly fixed in your minds their various positions, and see what favorable positions they severally occupied for seeing all that transpired on that occasion. I want you also to remember the kind of witnesses introduced by the state—all of them, save one, of mature years; and all the adults, except one lady, were men, who, from their very appearance, if personally unknown to you, you would at a glance say were cool, calm and collected at the time, and saw just what they swore to, and nothing more nor less.

Now, gentlemen, we have Mr. Young here, on this rail, inside of the old circus ring, between the ticket wagon and the door of the side-show, and in full view of that door or "gang-way," as it is sometimes called; a good position for observation anyone would say. As the difficulty progresses, and his curi-

osity is excited, he advances a few steps, and takes position on the elevated ring of the old circus, still nearer the door, still nearer the parties engaged, and consequently in a still better position to see what was going on; then his third and last standing position, as indicated at a point east from the ring of the old circus, still in full view of the parties, and also in view of the piazza of his own house, standing as it does almost due south from this little canvas. Now, if anyone else fired either one of the three first shots which Young testifies about, you know he would have seen it; he would have known it, and he would have exonerated John R. Kelly from the charge of being the assailant. Well, he swears positively to the first three shots being fired by him; did not see anyone else fire; did not hear anyone else fire; heard no other pistol fire except that in the hand of Mr. John Kelly. I want you to fix that fact in your minds firmly, and keep it there as we go along. Just as the third shot is fired Young sees his wife beckoning to him from the piazza of his house, and starts home. He does not see any more shooting, but he sees and does something else which we shall come to presently. It seems that a kind Providence so arranged these witnesses to this bloody tragedy that some one of them should be in position to see what another could not see, and thus we have two more who saw every shot after the first one, and three who saw all fired that were fired after the third, and the persons by whom they were fired at the same time.

James Clark was inside of the side-show; met Charles Kelly in there and shook hands with him; loud talking; angry words commenced at the door, indicating a breach of the peace. Charles recognized the voice of his brother, and went back by the way he came in, through the door towards the difficulty. The loud talking, the angry words increased to such an extent that Clark did not think it safe to go out at the door, and—prudent man as he was—he raised the canvas at the back part, to the right of the “big ox” and went out. After he got out, he turned to his left, and passed around the south side of the little canvas. Just as he got about opposite the east side of

the little canvas, he heard the first shot; did not see it, nor know who fired it; he saw the mules and wagon across the ditch, and started for the wagon, to get behind it. Two other shots were fired, the last ball passing between him and the mules, before he reached them. Passing around the head of the mules, he took position here (pointing out to the jury Clark's position, as indicated on the diagram), in full view of the whole scene. What then did he see? What sight did Clark behold from this point of observation? The showmen firing at the Kellys, or at anyone else? No! he saw two men coming around this "fly" (pointing it out), one down on his left elbow and hip, trying to help himself along—alas! poor, unfortunate Ames—the other holding him by the right arm. What next? Then John and Charles Kelly coming around from the same direction—pursuing, not being pursued—each having a pistol in their hands, and firing in the direction of the men who were making their way off! They continued to fire until the men disappeared under the canvas; they were firing in the direction of the canvas, and they ceased firing about the time the men disappeared; saw no one else fire; heard no other shots fired! Three shots had been fired before he got behind the wagon, and he estimates the entire number that he saw and heard at from seven to ten shots. The next thing he heard was that there was a man killed. He went around to the spot and found the man—alas, poor Oxford!—lying on his face dead. You know, gentlemen, that if anyone else had fired a shot after Clark took position behind that wagon, he would have seen it.

Milton Gammage we will take up next. His position was also a good one; also a different standpoint from either of the others, a little east of north on this diagram, from the door of the little show. He heard one shot, which he did not see—but Young did see who fired that—he then turned around and saw all the balance. "Who fired those shots, Mr. Gammage?" "John and Charles Kelly," is the answer; they were the only persons he saw fire; they were firing in the direction of the tent, at three men, who seemed to be getting away, and event-

ually went under the canvas. He saw them go under the canvas, just to the left of the door from where the Kellys were shooting at them! Any concert of action, showing a like malicious intent in the two Kellys, in all this?

William B. Oxford was standing on the old circus ring—an elevation of about twelve inches above the surrounding earth—just to the right of the ticket-wagon, a little west of north from the door of the side-show, another good point of observation, there could not have been selected a better one. He heard fuss at the door; saw John Kelly, the aggressor, and Charles, seemingly a peacemaker, apparently trying to prevent a difficulty, until John had fired his third shot, then Charles joined him in his murderous attempt, drew his pistol and commenced firing also; and, from that instant of time, gentlemen, there was “a union, or joint operation, of act and intention,” on the part of both the brothers. After the third shot, according to this witness, also, the showmen commenced giving back and trying to get away. You will observe from this diagram that they disappeared from the view of this witness when they passed around this “fly,” on which the “big ox” was painted, and so he says. (Pointing out to the jury the position of Oxford.) Now, not to dwell longer on his testimony, as I must hasten on, you will observe the perfect corroboration between him and all the others; and further, that the two Kellys were shooting as fast as they could. Now you know that two men each with loaded repeaters, intent on killing others, when they try to do so, can shoot very fast. Those two pistols must have been emptied in a very few seconds of time, and before Young got ten steps from the spot, in the direction of his home.

James Miller, Reuben Guise and Tim Sullivan, all men of coolness and courage, as evidenced by their appearance upon the stand, and all occupying different standpoints, saw no one else fire a pistol on that day, except John and Charles Kelly. If anyone else had fired at or towards the Kellys, they were in the line of fire; they were, as all men in their positions would have been, anxious for their own safety. Mr. Sullivan

turned and walked off, but the other two did not—they stood their ground, maintained their positions, and they saw no one else fire. Don't you know they would have seen the showmen fire, if they had done so!

Mrs. Mary J. Halsey was on the ground, standing near the door of the side-show; had eight children under her charge; was waiting for her brother-in-law to return with the tickets which he had gone to purchase, when the shooting commenced; did not know the men who were shooting, but says they were shooting towards the canvas. As the other witnesses, who knew the Kellys, all swear that they were shooting towards the canvas; then, the men whom Mrs. Halsey saw shooting towards the canvas were the same persons. By this witness we also prove the presence of women and children upon the ground at the time; their close proximity to this affray, and the terror it excited among them. As soon as pistols commenced firing she took her little charge and left the ground, panic-stricken, as did hundreds of others, and sought the protection which Mr. Hooks Brown's house afforded. The scene may be better imagined than described. Women and children running in every direction to save their persons from the deadly effect of murderous pistol-balls, fired indiscriminately into a crowd at a public place and without regard to consequences! Is there not conclusive evidence of "an affray, in a public place, to the terror of the citizens and disturbance of the public tranquility" in this case, and that this prisoner and his brother were sole actors and participants in that affray? But counsel for the defense say that, James B. Avant, the first witness examined by them, proves that the first pistol was fired by someone else. I deny it, and appeal to his testimony to support me. He was standing on the wheel of the ticket-wagon, with his left side to the door of the side-show. He was intent upon the object which took him to the ticket wagon, viz.: the purchase of tickets for some ladies; he heard the noise, but did not look that way until the first shot was fired; he did not see who fired that first shot, but bear in mind that David Young did, that Wm. B. Oxford did; that shot was

fired by John R. Kelly! Avant says the second shot came from the pistol of John R. Kelly, but the third shot, judging from the smoke, was fired by someone else; it looked to him like Mr. Charles Kelly had fended off the pistol in the hand of someone else, as the smoke arose about the hand of Charles Kelly. This was mere supposition on the part of Avant, while we have the positive evidence of two other witnesses that the third shot was fired by the prisoner, and by no one else. Then how does Avant contradict the state's witnesses? Which had the best opportunity to see who was doing the shooting, all the time it was going on? Positive testimony outweighs negative, and consequently the evidence of the state's witnesses is not shaken by Avant's. But, Avant saw something else the state's witnesses did not see—he is positive about one thing, and that is, as to the bullet holes through this canvas, and in the "monkey-wagon." Mark the position of this "monkey-wagon" inside that canvas; the position of the "Albino woman," the "big ox," and the place where Clark first, and Oxford next, went out. (Showing them the diagram.) Did not these balls rain like leaden hail on that canvas, through it into the "monkey-wagon"; into the mother of the Albinos" and into poor Oxford. The showmen did not fire them, because they were next to the canvas; the Kellys were outside of the showmen, firing at the showmen "and firing towards the canvas"! Then, if the Kellys did not fire the balls that went through the canvas, into the monkey-wagon, into the mother of the Albinos, and into and through the body of Oxford, who did?

Having thus glanced at the testimony of Avant, merely for the purpose of demonstrating that it does not contradict the state's witnesses, as to the identity of the person who fired the first three shots, as well as to demonstrate that the shots fired by the Kellys went through the canvas and into the monkey-wagon, I wish you to weigh and consider this latter fact, in connection with the evidence of another one of the state's witnesses, viz.:

George Young, the little boy, testified before you with all

the composure to be expected of a witness much older than himself. He told just what he knew, and no more. He knew little, and knew that little well. He saw David Oxford when he came out of the side-show, with his child in his arms. He says that Oxford lifted up the canvas, on the back side next to the big circus, and came out half bent; that he ran in the direction of his father's house, until he fell, with his child still in his arms; that he saw his father, David Young, when he went to where deceased was lying, take the little child out from his embrace and hand it over the fence into his own yard; that was all he knew, except that he saw the two Albinos come out of the side-show at the same place Oxford came out at and immediately after he did; and, bear in mind, gentlemen of the jury, George Young saw no one else come out with Oxford.

Now, Dr. Price testifies that deceased must have been in a stooping position when he received his death-wound, from the fact that the ball came out about four inches higher up the body than where it entered it, and that he could not have kept on his feet more than one minute after the wound was inflicted; that he (witness) was inside the big circus, on a seat near the top; had his little son with him; heard three balls strike that big canvas near where he was; sat perfectly still until the firing ceased; does not think there was exceeding ten shots fired. After the firing was over about one minute, he looked out between the top and side canvas, and saw deceased lying with his child in his arms; started out to go to him and when he got outside; he found that Young had taken the child away.

Now, gentlemen, let me call your attention once more to this diagram; look at the position occupied by Dr. Price inside the circus as indicated by him (pointing out the spot to the jury), and you see that he was in exact range with the Kellys. In firing in the direction of the little tent, such balls as missed the monkey-wagon, the Albino woman and David Oxford, passed entirely through the little canvas and struck the big circus canvas beyond.

And now let us recur once again to the evidence of David Young, and take it up just where we left him to bring in the evidence of James Clark. Young saw three shots fired by John R. Kelly; just as the last shot was fired he saw his wife's signal from his piazza. Like all wives, she was anxious for her husband's safety and wanted him to come away. He strated to his house, and when he had gotten about twenty steps, his attention was called to the little child in the arms of a man lying on the ground about 30 or 35 feet south of the little canvas. Don't you know from the testimony of the other witnesses that the fire had ceased before Young had gone ten steps in the direction of his home? Don't you know also that if the men had been still shooting in the direction of the little canvas, it would have been dangerous for Young to have gone to where Oxford was lying? As soon as Young's attention was called to the little child, he turned aside to the right and went to where deceased was lying, took the little child, all bloody, out of its father's arm, carried it to his yard-fence, and handed it over to someone who was there to receive it. When he handed the child over the fence, Mr. and Mrs. Russell were inside of David Young's yard; bear that fact in your minds also.

We have thus examined Young, Clark, Wm. B. Oxford, Gammage, Miller, Guise and Tim Sullivan, all of whom saw the shooting, and no one saw anyone else shoot except John and Charles Kelly. Then, according to this array of testimony, no one else could have killed David Oxford. It must have been one or the other of these men. To break the force of this testimony, they have introduced several witnesses whom I shall not refer to by name; as I said in the opening, I shall give them the "charity of silence," and leave to your minds the impressions made upon them by their evidence as detailed from the stand. I am sorry for them; they ought not to have been brought here. But they rely mainly upon William R. Russell, the man whom, according to my brother Wooten, I threatened to "destroy." I am not in a humor to cut him up into "chigger meat," as the gentleman will have it,

but I don't think his evidence is entitled to any weight whatever with you—as I think I have already sufficiently shown—and I shall now proceed to give you my reasons still further for that belief. I appreciate the motive of Mr. Russell in trying to extricate his friends from the awful situation into which his own improper, wicked and reckless act has placed them, while I condemn the means which he employs for that purpose. But for Russell's difficulty with the doorkeeper, there would have been no bloodshed here on that day. The Kellys undoubtedly took up his quarrel, and sought to avenge what they understood to be an insult offered to him. He ran away and they did his fighting for him. Perhaps Russell intended simply a little bluster and bravado, "Sound and fury signifying nothing." They intended something more. Well, in order to acquit the prisoner, Mr. Russell places himself inside this side-show along with David Oxford. After the row commences outside the door, thinking "discretion is the better part of valor," he starts to go out at the back side; as they go under the canvas, and while he is stooping down with the canvas resting on his right shoulder, he facing south at the time, passing his wife and children out with his left hand, and while the firing is going on rapidly outside the door, in the hurry and excitement of such a moment, he sees a man with a black moustache, with a broad brimmed, low crowned soft hat on, with a "sorter mixed" coat on, and with a "Colt's five-inch" repeater in his hand, with the muzzle pointing down as though he had just fired it, with smoke between himself and the man. Wonderful! Astonishing exhibition of clear sightedness on the part of this wonderful witness! He not only saw the man, the color of his moustache, measured the width of the brim and height of the crown of his hat, and the color of his coat, but actually measured his pistol, and could readily tell that it was a "Colt's five-inch"! and all in a few seconds of time, according to his own testimony, he saw all this across a thirty-foot canvas, while he was down in a stooping position, with the canvas on his shoulder, engaged in passing out his wife and children, and in a space of time that would have been con-

sumed in walking across this court room, not more than thirty feet! And while he was seeing this, according to his testimony, Miss Mattie Reynolds, one of defendant's other witnesses, sworn next after him, says he was outside, that he ran up and fired two shots and then ran off! His memory is good, but not reliable as to his own pistol, which you will remember, Miller and Solomon both swear he drew upon the door-keeper, and which Solomon says he fired once in the melee outside the door! And yet, both himself and his wife swear, he did not draw a pistol on that day! You will also remember the testimony of Mr. Peeples, one of the jurors who tried Charles Kelly, and who heard Russell's testimony on that trial. He says that Russell then swore that he was facing west while under the canvas, with the canvas resting on his left shoulder, and that he passed his wife and children out with his right hand. Strange! passing strange, that his memory should be so good about some things, and so utterly wanting in others of equal importance. He forgot that he had or drew a pistol himself, forgot that he fired a pistol himself on that bloody day; and although it has been but little over two months since he testified from the stand before, he has also forgotten that he then told the jury his left shoulder held up the canvas; that he faced west; that he passed out his wife and children with his right hand. He now reverses the whole thing, and tells it altogether different. Is such a witness worthy of belief?

But, says my brother Wooten, "the mind looks out for a motive to action in this case"; and he endeavored to show you that it was reasonable to suppose the showman did this thing, because he had a difficulty with Russell at the door, and wanted satisfaction. I fail to see it in that light. At the instant of time, according to Russell, while this bloodthirsty showman was thus standing calmly within the tent, bent on shooting two unarmed men, who were escaping from the tent, one of them with a little child in his arms, and the other with a wife and three children in his company, his friends were being murdered just outside of that tent, within a few feet

of where he stood, and the two Kellys were riddling the canvas just behind him with balls from their pistols! If a showman, or anyone else, had stood where Russell placed him, one or more balls would have passed through his body; he was not there, gentlemen! If the showman had been intent on shooting anyone, he would have been outside, assisting his own people—not inside, where he was in more danger to himself, shooting at unarmed men! Neither was Mr. Russell inside that tent; he did not, as he says he did, go out with David Oxford; if he had done so, George Young would have seen him, and if he been inside when the fuss commenced, James Clark would have seen him. Again, gentlemen, take Russell's account of his parting from David Oxford, after they got outside of the little canvas, and how heartless, how wanting in all the instincts of humanity, does he make himself appear! He saw the blood gush from his mouth with such force as to stain the dress of his wife, as to spot the dress of his child, as to redden the beard of the poor death-stricken man; he heard him, in the agony of that moment, exclaim, "Lord, have mercy," and then took his wife and children and went away from him, as though he had been a wild beast, instead of that wife's brother; no offer to aid him; no hand extended to break the force of his fall upon the ground; no thought or care for the poor little child already orphaned, and covered with its parent's blood; no call for a doctor, to save him, or make an effort to do so; nor does he again even inquire for him, or try to learn what has become of him, or go even to shed a tear over his corpse; until others, and perhaps strangers' hands had borne him from thence to the drug store of Dr. Cheatham! I do not believe that even Russell could have been so utterly callous and cold as to have acted in any such a way. And to cap the climax of his own infamy, instead of raising the hue and cry against this man with the "black moustache," with the "broad-brimmed soft hat," the "sorter mixed coat," and the Colt's ever to be remembered "five-inch," who killed David W. Oxford while he was passing out of that tent in company with him; instead of searching through the whole

circus company, into every wagon-box, or other hiding place, until he found him, and had him committed to prison, to answer for that atrocious crime, he does what? Goes off in search of his little boy! And Young tells you he saw that doorkeeper, that terrible man, that cold-hearted, diabolical murderer, according to Russell, here in this court house next day! Why was he not then arrested? Ah! just because he was innocent; just because Russell had not then had sufficient time to concoct his base fabrication. Away then with such a witness; he is utterly unworthy of belief. I commend to his defenders another passage from that venerable book brought into court tonight: "Lying lips are an abomination to the Lord, but they that deal truly are his delight. He that speaketh truth sheweth forth righteousness, but a false witness deceit!"

"The mind, in looking out for a motive to action," utterly fails to find any motive, or any incentive, that could have prompted Ames, or any of his men, to have insulted anyone in such a gross manner, as is charged against them, on that day. He, as proprietor, had invested an immense sum of money in that venture. His object was to make money, and in order to realize this expectation, he had to be popular with the people, as well as make his exhibitions attractive, so as to draw crowds to witness the performances. He was a popular man, and for one pursuing his calling, a very gentlemanly, quiet and unobtrusive personage. He would not have kept in his train a single person who would have insulted anyone, much less a woman! If for no other reason, because it would have been a bad policy to have done so; his success and profits depended upon popularity and attractiveness. An insult offered to a lady in Dawson, though unavenged by her friends, would have followed him wherever he went, and would have told against him, by keeping other ladies away from his exhibitions. Again, his popularity depended upon the prompt suppression of all rowdyism on his grounds about his show. If he permitted a Russell and his backers to run off his doorkeeper in Dawson, and endanger the lives of women

and children in Dawson, men of similar dispositions might do the same thing elsewhere, and soon he would have had no spectators, and for the want of them his enterprise would not have been productive of profit. All Ames or his men tried to do on that day was to preserve the peace. In the interests of peace and good order he yielded up his life. No one heard any call for "gun-men" on that day, save one of the defendant's witnesses, and if there were any such persons on the ground, they certainly did not use their guns against this prisoner and his brother, as they might justly and lawfully have done. But, gentlemen, exhausted nature cries for rest. The lateness of the hour admonishes me that it is time to close this argument. I have endeavored to discharge my duty, and although it may have been done in a feeble way, yet I feel I have done so to the best of my ability. My skirts are clear, whatever may be the result; and as I retire from your view, one more scene in this drama will have closed. Soon the responsibility will rest on you alone, and may the Great Father of us all guide you by His wisdom in coming to a just and righteous verdict; one that will meet the approval of those who are to come after us, when you and I, together with the passions and prejudices of this hour, shall have passed away.

THE CHARGE OF THE COURT.

JUDGE HARRELL. Gentlemen of the Jury: It is scarcely necessary for me to remind you of the importance of the case now about to pass into your hands for your exclusive action. The patient and attentive manner in which you have interested yourselves in the investigation since it was submitted to you, shows that you fully appreciate not only its importance, but the magnitude of your responsibilities in connection with it.

As jurors you stand as the representatives of society, to declare whether the laws made for its protection and security have been violated. On the one side is the good order, peace and dignity of the state, the majesty and dignity of the laws

and the protection of every citizen; on the other, is the life or death, liberty or imprisonment of the prisoner at the bar. The issue is formed upon this bill of indictment: *The State v. John R. Kelly*, who is charged with the crime of murder, and the oath which you have taken informs you that the issue is to be well and truly tried, and a true verdict given according to the evidence—without prejudice—without favor—with minds perfectly impartial between the state and the accused. Public opinion—popular feelings—individual prejudices for or against the prisoner, have nothing to do with the case. As far as your duties are concerned, it is a matter for the judgment to determine, influenced solely by the law and the evidence as submitted to you from the stand. And whatever the facts proven and the law applicable to the case demands, should be honestly, conscientiously and fearlessly pronounced. For consequences you are not responsible; your duties cease with your verdict, and if those duties are properly performed, there your responsibilities end also. You speak—not your private opinions as citizens, upon a matter in which you are at liberty to exercise a choice or use a discretion—but as representatives of the law, sworn to execute its behests—you pronounce the judgment of the law.

If the prisoner at the bar has violated the law, he should receive the punishment affixed to such violation. If he is innocent, he should go forth from the temple of justice with his innocence vindicated by your verdict. And in determining this question, you cannot go outside of law—you cannot be influenced by any considerations outside of the evidence. If you should do so, your verdict would not speak the truth according to law, and whether it was one of “guilty” or “not guilty,” you would be equally culpable. To err on the one side is as criminal as to err on the other. Fortunately for us, as far as the law is concerned, there has been so many adjudications of the principles controlling cases of this kind, that there is little room for error or mistake; and those adjudications cover not only the general principles that govern the case itself, but they guide the jury in their investigations, and

point out the manner in which they arrive at a conclusion or true verdict.

The rules of law prescribing your powers in criminal cases, the mode of construing evidence, the degree of credit to be accorded to individual witnesses, and the sufficiency of evidence necessary to authorize you to come to a conclusion are plainly laid down, and as well defined as the law of the crime itself, and it is a matter of congratulation to me, that in giving to you in charge the law of this case I am able to do so upon nearly all of the principles involved, in the words of Judges who have honored the bench by their legal attainments and personal integrity, and which have received the endorsement of our Supreme Court.

And first, as to your powers: In criminal cases, you are made the judges of the law as well as of the facts. But this power does not loose you from all restraint and turn you over to the exercise of an unbridled discretion or arbitrary judgment. It does not authorize you to declare law to be not law or something which is not law to be the law, or that it should be different from what it is, or that it is a hard law and ought not be executed. Your powers have been so well defined in this respect by the Supreme Court that I will read it to you from the case of *Brown v. The State*, so that there cannot be a mistake on this question: "Nor does it mean (speaking of the powers of the jury to judge of the law) that jurors may do as they please or disregard the law as given them in charge by the Court. If the Court errs in its rules or charges the parties may except and have its errors corrected. If the jury should disregard or set aside the charge of the Court, their errors would be irreparable, and the rights of parties jeopardized or even destroyed; for, as no power is given to juries to declare the law, no tribunal has been established to correct their errors of law."

And further, "the section of the Code declaring jurors to be judges of the law as well as of the facts, furnishes the meaning of these words, by saying they shall in every case find a general verdict of guilty or not guilty. To do this it is abso-

lutely necessary for them to come to a conclusion dependent upon both the law and the facts. They must say to themselves the facts are so and so, and the law is so and so, and the accused is therefore guilty or not guilty."

But it does not follow from this that the jury may make up their judgment of either the facts or law from any other than the legal sources of information.

Where do you get the facts? Have you any right to imagine them? Must you not look to the evidence for them? Suppose a Judge was to charge the jury that they were not bound to find according to the evidence—that if they had a notion about the case not derived from the evidence, they might reject the evidence and find upon that notion. Would not such a charge be in the very teeth of that oath, which binds them to find according to the evidence? They must, it is true, judge of the facts. They must determine, whether or no, under the evidence, the prisoner is guilty or not guilty. But they must take the evidence, as it comes before them, through the proper legal channels, and nothing is evidence that does not come in that way.

So, also, of the law. To find a general verdict of guilty or not guilty they must come to a conclusion as to what is the law of the case. They must apply their conclusions as to the law, and their conclusions as to the facts together, and they must, from their judgment of both the law and the facts, find a verdict. But how are they to get at a knowledge of the law? This Court has said that they cannot even carry the Criminal Code to their room. They are generally plain men, unskilled in the law. Is it possible that our law-givers intended to leave so grave a thing as the law of crimes to the consciences and good sense and "internal suggestions" of a jury? We think not. The law appoints a channel by which its rules and regulations get to the jury. It is made the duty of the Judge to convey it to them. In the case of *Keener v. State*, 18 Ga. 230, 231, Judge Lumpkin said: "It is the duty of the Judge to declare to the jury what the law is, with its exceptions and qualifications, and then to state hypothetically to the jury,

that if certain facts which constitute the crime are proven to their satisfaction they will find the prisoner guilty, otherwise they will find him not guilty."

It is made the duty of the Judge to tell them the whole law of the case. He may read it to them, or give it to them in his own words, or he may assent to, or dissent from, legal propositions advanced by counsel upon one side or the other. He is the channel through which, under the law, the jury get the law of the case before them.

When a jury are impanelled, they are presumed to know nothing of the case. The pleadings, the evidence, and the charge of the Court put it before them, and in forming their judgment upon the law and the facts, they are just as much at liberty to pay no heed to the evidence as they are to pay no heed to the charge of the Court. The latter is the channel through which they get the law, the former is the channel by which they get the facts, and they have as little right to take up their internal suggestions of the one as they do of the other. It is unfair and unjust to cast upon juries any such duty as is claimed for them. What conscientious man would undertake under his oath, to say what was the law of a case, if you deny him access to the law books and tell him that the Judge is not a sure guide? If you command him to judge and shut him up from the means of judging, you do as the eastern king did with his soothsayers—you command him not only to tell the meaning of the dream, but what the dream was. This a Daniel, and a Daniel alone, was equal to, but no man unlearned in the law of these days, however acute, with a full consciousness of the task he had undertaken, would, as we think, be willing, under his oath, to march up to it; and our experience is, that our purest and most intelligent jurymen never attempt it.

Lawyers and Judges may tell them such is their right and their duty, but they nevertheless take the Judge as their oracle, and feel, and we think rightly, that they have satisfied their oaths when they take the law from the Court without question.

That class of jurymen, who find verdicts upon their own notions of the law, are generally the same class who act upon their own notions of the facts and care as little for what the evidence teaches as they do for the law. From this you will see, declared by the law itself, the extent of your powers in judging of the law.

Next, as to your powers and duties in relation to the evidence. In construing the evidence it is the duty of the jury, when an apparent discrepancy exists between the testimony of different witnesses, to reconcile the whole together, if it can be done, so as not to impute perjury to either. If, from contradictory statements of a witness, or from conflicting statements of different witnesses, this cannot be done, then you must make your judgment from the weight of evidence, and the weight of evidence itself is determined by legal rules applicable to each case. You cannot, arbitrarily, discard the testimony of a witness. You cannot, from your private knowledge of the standing and character of a witness, or from circumstances in your knowledge, acquired outside of the case, attach more or less credit to one than another. This would be relieving yourselves from the rules of law and following your own "internal suggestions" or discretion.

In cases where there is no reason for you to believe that a witness is wilfully false, you must look to the circumstances in proof—concerning which there is no doubt—the reasonableness of his testimony; his means of knowledge of the facts whereof he testifies; his interest, if any, in testifying; his intelligence, and capacity, and manner of testifying, and determine the value of his testimony in connection with that of others.

In cases where the conflict of testimony is of such character as to produce on the minds of the jury a reasonable opinion that a witness has sworn falsely, or his credibility is attacked, you must look to the evidence introduced or used for the purpose of attacking his credibility, and from that evidence, taken in connection with the circumstances above men-

tioned, determine the degree of credit you will attach to his statements.

A witness may be impeached in three methods: 1st. By disproving the facts testified to by him. 2d. By proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case. 3d. By evidence as to his general bad character.

Until the testimony of witnesses are affected, as in the first instance, or their credibility is attacked in one of these ways, all stand before you equally credible, and one is to be believed as much as another, and every fact testified to by them is to be taken as true. The law is explicit. "Witnesses must be believed, unless they be impeached in some of the modes which the law declares sufficient to throw suspicion on their testimony. If their evidence be in no manner impeached, it is entitled to implicit belief, and the jury which disregards it incurs the guilt of wilful or reckless error."

Then as to the sufficiency of evidence. The law declares that, "in legal investigation moral and reasonable certainty is all that can be required. In criminal cases a greater strength of mental conviction is necessary to justify a verdict of guilty." It does not require the precision of mathematical demonstration. It does require moral certainty, and also that before a verdict of guilty can be rendered in any criminal case, the guilt of the accused should be established beyond a reasonable doubt. "After a due consideration of all the evidence, construed according to the rules of law, if a reasonable doubt should remain on the minds of the jury there is no question as to its effect. When the minds of the jury cannot come to a satisfactory conclusion on the issue before them from the evidence properly considered, they should leave the parties as they find them," is the rule in both civil and criminal cases. But a greater degree of caution should be observed in coming to a conclusion when life or liberty are involved in the issue. A reasonable doubt arises from the absence of that amount and quality of evidence which ought to satisfy the impartial and unprejudiced judgment of a reasonable and con-

scientious man of the guilt of the accused, and would render it improper to convict. Doubt ceases where there is mental conviction. There can be no mental conviction where there is doubt. But a man may be satisfied that where there is an equipoise in his mind after putting in the balance all of the circumstances pro and con, a particular plan or project, or in other words, when there is a doubt, it would be wrong for him to act. It is no more than the abstract proposition, that a man's judgment ought to be convinced before he acts.

It is not the doubt that satisfies, but the insufficiency of the evidence in some of the respects in which it may be proper to consider it, that leaves the mind in such doubt as to render it improper to act upon it. If the mind is wavering, unsettled, cannot be satisfied from the evidence whether the crime was committed at all, it would be improper to convict.

But the jury ought never to be left to infer or conjecture that they can create a doubt for themselves and act upon it for the exculpation of the guilty. A thousand fancies may suggest themselves to skeptical minds to create unsubstantial doubt, as that witnesses may not remember accurately—may be mistaken—may swear falsely, etc. Such things are not allowable. Witnesses must be believed unless they are impeached in some of the modes which the law declares sufficient to throw suspicion on their testimony. If their evidence be in no manner impeached, it is entitled to implicit belief, and the jury which disregards it incurs the guilt of wilful or reckless error.

Under these rules for your guidance, determine from the evidence whether the prisoner is guilty of the crime with which he stands charged, or one of less grade, or whether he is not guilty.

And to enable you to come to a legal conclusion, the Court will read to you the law of the crime itself as it is plainly and distinctly prescribed in our Penal Code:

"Homicide is the killing of a human being of any age or sex and is of three kinds—murder, manslaughter, and justifiable homicide." Code, Sec. 4253.

"Murder is the unlawful killing of a human being in the peace of the state, by a person of sound memory and discretion, with malice aforethought, either express or implied." Code, Sec. 4254.

"Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof." Code, Sec. 4255.

"Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart." Code, Sec. 4256.

"Manslaughter is the unlawful killing of a human being without malice, either express or implied, and without any mixture of deliberation whatever; which may be voluntary upon a sudden heat of passion, or involuntary in the commission of an unlawful act, or a lawful act without due caution and circumspection." Code, Sec. 4258.

"In all cases of voluntary manslaughter there must be some actual assault upon the person killing, or an attempt by the person killed to commit a serious personal injury on the person killing. Provocation by words, threats, menaces or contemptuous gestures, shall in no case be sufficient to free the person killing from the crime and guilt of murder. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the homicide sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and be punished as murder." Code, Sec. 4259.

"Involuntary manslaughter shall consist in the killing of a human being without any intention to do so, but in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner; provided, always, that where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a riotous intent, or of a crime punishable by death or imprisonment in the penitentiary, the offense shall be deemed and adjudged to be murder." Code, Sec. 4261.

"Justifiable homicide is the killing of a human being by commandment of the law, in execution of public justice; by permission of the law, in advancement of public justice; in self-defense, or in defense of habitation, property or person against one who manifestly intends or endeavors by violence or surprise to commit a felony on either; or against persons who manifestly intend or endeavor in a riotous or tumultuous manner to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein." Code, Sec. 4264.

"A bare fear of any of those offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing; it must appear that the circumstances were sufficient to excite the fears of a reasonable man, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge." Code, Sec. 4265.

"If, after persuasion, remonstrance or other gentle measures

used, a forcible attack or invasion on the property or inhabitation of another cannot be prevented, it shall be justifiable homicide to kill the person so forcibly attacking or invading on the property or habitation of another; but it must appear that such killing was absolutely necessary to prevent such attack and invasion, and that a serious injury was intended or might accrue to the person, property or family of the person killing." Code, Sec. 4266.

"If a person kill another in his defense, it must appear that the danger was so urgent and pressing at the time of the killing that in order to save his own life the killing of the other was absolutely necessary; it must appear, also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given." Code, Sec. 4267.

"All other instances which stand upon the same footing of reason and justice as those enumerated, shall be justifiable homicide." Code, Sec. 4268.

You will, in the first place, inquire from the evidence whether the deceased came to his death at the hands of the prisoner, or in case he did not, whether he was slain by Charles A. Kelly, and the prisoner was present, aiding and participating in the acts of Charles A. Kelly, that caused his death with like intent. For where two or more persons, acting together with a common intent and purpose, are present at the commission of a crime, though the deed may be wrought by the hand of one alone, all who are present aiding, abetting, or giving countenance to it are alike guilty—the law makes no distinction between them. Any act done by one of the party in pursuance of the common purpose and with reference to it is, in contemplation of law, the act of all; and proof of such act is evidence against any or either of the others who were engaged in the combination. To make out the guilt of the one who, in fact, did not strike the mortal blow, it is necessary that the proof should show that he was acting in concert with him who did, moved by a common intent and purpose.

It is not necessary that an actual verbal agreement or understanding between the persons should be proved, such concert of action or intention may be inferred from joint acts, coupled with circumstances which would show that they were engaged in the same act, with the same intent. Presence and

participation in the act committed is evidence from which the jury might infer consent and concurrence.

If you should find, from the evidence, that the prisoner himself fired the shot which killed deceased, or that Charles A. Kelly did it and prisoner was present, acting in concert with him, moved by the same design with common intent and purpose, your next inquiry will be as to the grade of the homicide. And first, "whether the facts in proof are sufficient to bring it under the definition of murder." That is, whether the deceased was killed with malice aforethought, either express or implied. Express malice, as I have shown you, is "the deliberate intention to take away the life of a fellow-creature, manifested by circumstances capable of proof." And the law declares that malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart. This is a question for your exclusive determination under the law, and in coming to a conclusion thereon you should consider all of the evidence before you, elucidating the acts and the motives of the parties engaged in this unfortunate affair—the circumstances attending and surrounding the homicide—the place where it occurred and the manner of its occurrence—the necessity of its commission, or the recklessness with which it was committed, if there should be evidence of that fact—the want of provocation, or the justification thereof—are all to be considered, as they are severally established or disproved by the evidence, by you in determining the question of malice.

The fact that a man goes armed, contrary to law, prepared for any emergency, is proven, is a circumstance from which the jury may infer malice. And it is contrary to law for any person to have or carry about his person any pistol, except a horseman's pistol, unless he carries it in an open manner and fully exposed to view. And since the Act of 18th October, 1870, it is against the law of this state for any person to carry about their person any dirk, bowie-knife, pistol, or revolver, or any kind of deadly weapon, to any court of justice, or any

election ground or precinct, or any place of public worship, or any other public gathering in this state, except militia muster grounds.

The use of a deadly weapon by a person in an assault upon another is evidence of malice and felonious intent. The wanton and reckless discharge of fire-arms into a large crowd, if without sufficient provocation to justify it, is also an evidence of malice. The want of sufficient provocation to justify the killing is also an evidence of the existence of malice. All of these, however, and any other evidence of malice may be rebutted by showing a sufficient provocation on the part of the person killed to justify the killing, or reduce it to a lower grade of homicide. But there must be an actual assault or some considerable provocation other than by words, threats, menaces, or contemptuous gestures, to reduce the offense from murder to manslaughter. If an assault or such provocation exists, and there is not a sufficient interval between the assault and such provocation for passion to cool and the voice of reason and humanity to be heard, the offense is reduced to voluntary manslaughter. But if there is no such assault, or other considerable provocation equivalent, to justify the killing or reduce its grade, then the slayer is guilty of the highest offense, murder.

You will look into the evidence, and from the facts in proof determine this question. But if the facts in proof are not sufficient to make it a case of murder, then inquire whether it be manslaughter. And you will observe the great distinction between murder and manslaughter is that the first is accompanied by malice, either express or implied, and the latter is not so accompanied, nor by the least degree of deliberation (for the least deliberation involves malice), and makes it murder. Every case of homicide not accompanied by malice, express or implied, is a case of manslaughter or justifiable homicide. Manslaughter differs from murder in the important particular of the absence of malice as when it happened in a sudden heat of passion,—when passion has obtained dominion over reason and the gentler feelings of the heart.

From a respect to human infirmities, the law in such cases mitigates the offense and reduces it from murder to manslaughter. Still, this is unlawful, the law not permitting any man to avenge his own wrongs, either real or fancied, by killing the supposed offender, unless in cases of great emergency. There must be some actual assault on the person killing, or an attempt by the person killed, or some considerable provocation by him other than provocation by words, threats, menaces or contemptuous gestures, and the killing must be the result of that sudden, violent heat of passion supposed to be irresistible under such assault, such attempt or such considerable provocation, to reduce the offense from murder to manslaughter. But if there be no such assault, no such attempt, or no such considerable provocation, the offense is murder; and manslaughter if there was an actual assault by deceased or an attempt by deceased to commit a serious personal injury on prisoner, or his brother, Charles A. Kelly, or if the deceased gave prisoner considerable provocation, and before his passions had time to cool and subside. If prisoner under such circumstances killed deceased himself, or participated with Charles A. Kelly under such circumstances, with a common intent and purpose, he is guilty of voluntary manslaughter. Examine the evidence and see whether the offense comes under that definition. And, go further, and see whether it falls under the next grade of homicide, which is involuntary manslaughter, and is defined by law to be "the killing of a human being without any intention to do so, but in the commission of an unlawful act or a lawful act. Provided always, that where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a riotous intent or of a crime punishable by death or imprisonment in the penitentiary, the offense shall be deemed and adjudged to be murder."

So you will perceive, that the killing of a person without any intention whatever to do so may amount to the highest grade of homicide—murder, in certain cases, when the act

that causes death is of itself unlawful, or the death is caused by one in the prosecution of a riotous intent, or in the course of the commission of another crime which might subject the perpetrators to punishment by death or imprisonment in the penitentiary. After which you may examine by the proof whether it falls under the third grade of homicide, which is justifiable, and is defined by law to be: 1st. When the killing is by commandment of law in execution of public justice, as when an officer executes a criminal pursuant to the sentence of the law. 2d. In advancement of public justice, as when an officer in the due execution of his office kills a person who resists or assaults him. 3d. In self-defense, against one who manifestly intends or endeavors to commit a felony upon the person killing, or someone that he by natural ties, as kindred, or by legal permission, as of one under his protection, he has the right to defend under the same circumstances, but the intent of the aggressor must be to commit a felony, which is defined by law to be any crime which is punishable by confinement in the penitentiary or capitally.

If the intent or endeavor of the aggressor is only to commit a trespass, as to beat the party, it will not justify the killing of the aggressor. The assault or the trespass, as above described on the person killing, may reduce the offense from murder to manslaughter, but cannot justify the killing. To authorize the killing and make it justifiable homicide, it must be an attempt to commit a felony as above described, or on the habitation or property of the slayer, or against persons acting in a riotous and tumultuous manner. The sections of the Code which I have read to you relate to the right of self-defense, and they constitute the law which must govern you in the determination of this branch of the case. The right of self-defense is given by sections 4264, 4265 and 4266, against one who manifestly intends or endeavors by violence or surprise on the habitation, property or person of another. This right is limited by section 4265, which requires that the circumstances, to justify the killing, must be sufficient to excite the fears of a reasonable man, and that the party killing

really acted under the influence of those fears and not in a spirit of revenge. And the 4267 section still further limits it by saying that it must appear that the danger was so urgent and pressing at the time of the killing that in order to save his own life the killing of the other was absolutely necessary, and it must appear also that the person killed was the assailant, or that the slayer had really or in good faith endeavored to decline any further struggle before the mortal blow was given. And section 4268 places all other instances which stand upon the same footing of reason of justice as those enumerated upon the same foundation, and holds such instances to be cases of justifiable homicide.

I have been thus full and explicit in giving you the laws in charge concerning homicide, from the fact that it may become necessary for you, in making up your verdict in this case, to come to a conclusion, not only in reference to the acts of the prisoner himself, but the acts of Charles A. Kelly, and those acts not only in connection with deceased, but in connection with other parties, as of Ames and those persons who were in company with him.

If the shot which caused the death of the deceased was discharged at Ames or other persons, and at the time it was so discharged Ames or the other persons at whom it was aimed, was endeavoring, by violence or surprise, to commit a felony on the habitation, property, or person of prisoner or his brother, and if prisoner acted under circumstances sufficient to excite the fears of a reasonable man, and was influenced by those fears and not by a spirit of revenge, and if, at the time the shot was fired, the danger was so urgent and pressing that, to save his own, or the life of his brother, Charles, the firing was absolutely necessary, and the shot accidentally missed the person or persons aimed at, and caused the death of deceased, without any intention on the part of John R. or C. A. Kelly firing it, then the prisoner was justifiable, and you should acquit him; but if there was no such attempt to commit a felony on the habitation, property, or person of prisoner, or his brother, by any person, and there

was no reasonable ground to fear such an attempt and the danger was not so urgent and pressing that, in order to protect his own or his brother's life, the firing of the pistol was absolutely necessary, or if the circumstances attending the firing of the pistol which caused deceased's death by prisoner, if he did it, or by Charles A. Kelly, if he fired it, and prisoner was present participating in the act with a common intent and purpose, does not place this case upon the same footing of reason and justice as those enumerated, he was not justifiable.

You will take into consideration all of the facts as proven by the witnesses in this case. Scan those facts under the rules which the law has prescribed for your guidance, and which I have given in charge to you, and say of what crime the prisoner is guilty, if he is guilty of any.

If you are satisfied beyond a reasonable doubt that the part taken by him in the acts which caused the death of Oxford makes him, under the law, guilty of murder, so find him. If voluntary manslaughter, so declare. If of either of the grades of involuntary manslaughter, so let your verdict be. If a case of justifiable homicide, acquit him. If the circumstances in proof are such as to raise a reasonable doubt in your minds as to his guilt, acquit him. Though you may have no doubt of the guilt of Charles A. Kelly, yet if you have a reasonable doubt that prisoner aided or participated in the act of Charles with a common design or like intent, acquit him. But the doubt must be a reasonable doubt; it must not be assumed to be used as a pretext for acquitting the prisoner, but must actually exist, and must arise from such a state of facts as to leave the mind in doubt on which side the truth lies—the want of, or the insufficiency of testimony to produce moral certainty on the mind of the jury.

When such doubts exist the humanity of the law gives the accused the benefit of it and acquits him. If, as to the grade of the offense, that is, whether it be murder or voluntary manslaughter, or either of the grades of involuntary manslaughter,

give him the benefit of the doubt attached to that grade—wanting in moral certainty, and find him guilty of the next lower one, upon which there may be no doubt.

If you should come to the conclusion that the prisoner is guilty of the offense with which he is charged, the form of your verdict will be:

“We, the jury, find the accused, John R. Kelly, guilty.”

If you think him guilty of either of the grades of homicide, express in your verdict of what grade he is guilty.

If you think that he is not guilty, say:

“We, the jury, find the accused, John R. Kelly, not guilty.”

THE VERDICT.

The *Jury* retired, and after being out one hour, returned into Court the following verdict: “We, the jury, find the defendant, John R. Kelly, *Guilty* of voluntary manslaughter.”

THE ESCAPE FROM PRISON.

It was 3 o'clock in the morning when the *Jury* returned its verdict and the prisoner was remanded to jail to await his sentence, and a guard placed over the premises. About 9 o'clock, or after the guard had been removed, John and his brother, Charles, who had been committed a few weeks before, succeeded in forcing the window of the prison, and made good their escape.⁷

⁷ Broke Jail. Charles A. and John R. Kelly, who had been convicted of the crime of manslaughter on the body of David W. Oxford, broke jail on Sunday morning last. They were placed in jail on Saturday night last with a guard around them. The jailor, thinking it useless to keep the guard on duty during the day, they were released, and about nine o'clock in the morning the prisoners made their escape. The other inmates of the jail testified that it was not exceeding fifteen minutes from the time they commenced to get out until they were perfectly free, which shows the worthless condition of the jail.—The Dawson *Journal*, of June 1, 1871.

"The attention of this body was called to the escape of Charles A. and John R. Kelly, from the county jail, on last Sabbath, by a special charge from his Honor, Judge Harrell, on last Monday morning, and orders and instructions given, and all aid offered that might be needed to ferret out the cause of their escape, and to look into the acts of the officers, and see if negligence on their part was the cause. We beg to report that we have diligently inquired into the matter and conscientiously labored to get evidence that would enable to detect a wanton and willful violation of orders or neglect of duty on the part of the officers of the county, but have not been able so to do. We, nevertheless, believe that the jailor did not do his full duty. We attach no blame or censure on Mr. Kaigler, sheriff of the county, for willful neglect of duty, in the discharge of the guard around the jail in the day. We recommend that the proper officer of the county offer a reward of one thousand dollars for the apprehension of the parties, or five hundred dollars for either one of them, and respectfully suggest to his Excellency, Gov. Bullock, the propriety of offering a liberal reward for the apprehension and delivery in any jail of the state of the said John R. and Charles A. Kelly." Presentment of the Grand Jury of Terrill County, May Term, 1871.

In the afternoon when Colonel Ames was found to be mortally wounded he made his will bequeathing \$50,000 to his wife and \$100,000 to his father and brother George, and gave directions that the circus should go on and fill all the season's engagements. Everything was done by the citizens of Dawson to render him comfortable while in life, and after his decease a committee of the town council accompanied his remains to Macon, where they were interred. The following letters help to explain the failure of the prosecution for his killing. They were written by the Solicitor General to the wife and father of the victim. No reply could be obtained to either.

Macon, Ga., February 7, 1871.

Mrs. C. T. Ames, New Orleans, Louisiana.

Dear Madam: You have doubtless heard the result of the trial of John R. Kelly, in Terrell county last November, for the killing of C. T. Ames, your late husband. His acquittal was attributed, in a great measure, to the indifference manifested by the friends and relatives of the deceased, to the result of that trial. Had they taken one-half the interest in the prosecution that the friends of the accused did in the defense of that case, the result would have been different. While the friends of Col. Ames employed no counsel to prosecute, leaving the whole management to the Solicitor General, the defendant employed the ablest counsel in the vicinity to defend him. Against the array of legal talent thus brought forward, the state's prosecuting officer of that circuit, was powerless to convict. While the relatives and friends of Col. Ames stood aloof, took no interest in the matter whatever, did not even attend the trial, the immediate friends and family of the accused were at work, from the day of the homicide to the day of the trial, and dur-

ing the trial, using all their efforts to ensure an acquittal. He was acquitted for these reasons, and not because the people of our state are indifferent of human life, and do not wish to see the violators of her laws punished.

After John R. Kelly had been acquitted, the Solicitor General asked to be excused from prosecuting Charles A. Kelly, on account of a near relationship between the wife of the accused and his own. On that account, the second Kelly was not tried at the same term. A court is to be held in that county on the first Monday in March, when the other Kelly will be put upon trial. In order that the laws may be vindicated, and the violators thereof punished, the Governor of the State of Georgia has seen fit to appoint myself as its prosecuting officer, in that particular case. This has been done upon the recommendation of the presiding Judge: 1st, because I practice regularly in that court, and am extensively acquainted there; 2nd, because of my familiarity with the facts, by reason of my taking down the testimony upon the trial which has already taken place. It is because I have been thus appointed to represent the State of Georgia, and to do what in my power lies to vindicate her laws, that I now address you.

In the trial of the other case, though a simple spectator, having no interest in the matter, other than such interest as was felt in common with every law-abiding citizen, I saw that it was unfortunate for the state that it went to trial without the evidence of some of Col. Ames' men, who were with him on that unfortunate occasion, and who witnessed the whole difficulty, from its commencement to its bloody close. All the witnesses were citizens, and there was a great conflict in their testimony; for while most of those sworn for the state, testified, that the only persons who fired shots on that lamentable occasion were the prisoners, others, sworn in behalf of the defense, were equally positive that Col. Ames had a pistol in his hand, held in a threatening attitude, and that some one of the showmen commenced the row, by firing the first shot in the direction of the Kellys.

Now, what I wish is this: I want, at least, three of those men at the next trial, if they are upon the top of the earth; it is all-important that I should have their evidence; important, because the good name of the State of Georgia is involved; important that crime—one of the highest crimes known to our laws—may be punished; important, that the memory of the dead victim of that unfortunate and unnecessary affray may be washed of the stain cast upon it by the evidence of the former trial, which made him the assailant. I want as witnesses:

1st. The treasurer of the company, who was in the ticket-wagon when Col. Ames left it to suppress the row at the door of the side-show, and, who, doubtless, witnessed the whole affair.

2nd. The two men who were with Col. Ames, and who, the witnesses for the state testified, were assisting him to get under the canvas, while the Kellys were firing upon him and those who were assisting him. One of the state's witnesses testified "that he was

looking at the three; that Col. Ames was down on his left hip and arm, helping himself along while the other two men were assisting him; one of them had hold of his (Ames') right arm, helping him; that Ames' back was to the men firing upon him, and that the fire was so rapid and so near to them that he expected every moment to see the whole three go down under it."

I think you owe it to yourself, to the memory of your dead husband, and to the vindication of a violated law, to get these witnesses and send them here, so that I may have the benefit of their testimony on the next trial. If they come, I want them to report to me here, in Macon, by the Saturday before the first Monday in March (four days). I want them to come incog.; to let no one know their business, lest the defendant take alarm and put off his trial. I wish to keep them in Macon until the trial is in progress, and so far advanced that it cannot be arrested. Then, at the proper time, telegraph them to come down and put them on the stand, and thus, I think, insure a conviction.

Hoping to hear from you soon, I remain, yours very respectfully,
Sam'l D. Irvin,
Solicitor General, pro tem, State of Georgia.

John Ames, Esq., Syracuse, N. Y.

Dear Sir: I enclose herewith a rough copy of a letter I addressed to Mrs. C. T. Ames, February 7th, last, and mailed to New Orleans, La.; which letter she received, but from that time to the present moment I have no response from her. That copy letter will inform you of my purpose in addressing her, and I beg leave to state in advance that I have the same object in thus addressing you. We are strangers to each other and I do not wish to do you any injustice in thought or deed. Your conduct, in connection with that of the woman who bore the name of your son while in Georgia, has been to me inexplicable. You permitted your son's death to pass as if he had not sprung from your loins. You had reasons for your course, I suppose, satisfactory to yourself, but our whole people have been astonished at the utter indifference manifested by all who were connected with that unfortunate man. Not one of you were at the trial of his murderers; no counsel was employed by you to aid in the prosecution, although he left you the accumulations of his life, including the proceeds of that exhibition in Dawson, which cost him his life. How could you expect strangers to take such an interest in the matter as to insure the conviction and punishment of his slayers when you were so remiss in your duty? This is the view that every unprejudiced mind must take of your conduct. But I do hope that you had good, valid, justifiable reasons for your course.

At the court held on first Monday in March I indicted the two Kellys for the murder of D. W. Oxford, a citizen, killed at the same time. I tried C. A. Kelly on that bill of indictment, and convicted him of voluntary manslaughter, which is only one grade below murder. He had previously continued the case against him for the murder of C. T. Ames. He will be tried for that offense at

the court commencing fourth Monday in May, 22nd day of the month. I say to you, as I said to Mrs. Ames, "I must have certain witnesses, if they are on top of the ground." The treasurer, who was in the ticket-wagon, and the two men who were assisting your son to get under the canvas, from the fire of the assailants' pistols. I want you also, as the father of the murdered man, that I may have, at least, the moral support of your presence, and to counteract the influence upon the sympathy of the jury, occasioned by the presence of the gray-haired father of the prisoner. You can get these witnesses. You can at least afford to pay their expenses here. You can do that much, at least, for the cause of justice and to vindicate the memory of your poor unfortunate son.

The State of Georgia has appointed me to prosecute. I feel myself, with my knowledge of the facts, fully competent for the task. I ask you to incur no expense in feeing counsel. I ask for no associate counsel; would not accept their aid if you were now to employ them. The state will pay me for my services, and hence, all I ask of you, and all that is necessary for you to do, is to procure the witnesses I have named. I do not know their names, but you do, or can find them out. George Ames, your son who was along with the circus at that time, can find them.

I want them to come to Macon that I may consult with them. Let them reach here by the 20th May; keep their own counsel, so that no one may know of their presence, until I choose to let it be known. If they have any fears for their safety (as they need not have), I will give them a safe-guard under the broad seal of the State of Georgia, and insure that they shall not be molested while here, and be permitted to return as soon as they have testified in the case.

In conclusion, permit me to say in all kindness, that you must not treat this request with the indifference that woman has manifested towards the one addressed to her; if you do, the United States shall ring with the infamy of a father who would not do anything to bring the murderer of his son to justice, when that son upon his dying bed bequeathed to that father the means which would have enabled him to accomplish that purpose without feeling the outlay.

Hoping to hear from you soon, and craving your pardon if I have said anything to wound your feelings, I remain, yours truly,
Sam'l D. Irvin,

Prosecuting officer for the state, in said case.

P. S. Conviction is certain, with the evidence I am seeking.
S. D. I.

THE TRIAL OF THOMAS WARD FOR THE KILLING OF ALBERT ROBINSON, NEW YORK CITY, 1823.

THE NARRATIVE.

In the busiest part of New York City, nearly a century ago, people were returning home from their work in the twilight, and the streets were crowded with carts and wagons. A pedestrian at a crossing, evidently thinking that a cart was going to be driven over him seized the horse by the head, which caused it to turn suddenly, almost throwing the cartman, Ward, into the street. He recovered himself, seized a heavy stick which was in the cart and threw it at the pedestrian. It missed him, but he picked it up and was about to attack Ward with it when the latter jumped from his cart, wrested it from his hand and struck him over the head with it. The man fell to the ground unconscious, and a few days later died from the effects of the blow. Tried for manslaughter, the cartman was acquitted, the jury taking the view that the blow was struck in self defense.

THE TRIAL.¹

In Court of General Sessions of New York City, November, 1823.

HON. RICHARD RIKER,² *Recorder.*

November 18.

The *Prisoner* was charged in an indictment for manslaughter, with having wilfully and feloniously killed Albert Robinson, by a blow inflicted on the 17th of October last, on his temple, by the rung of a cart.

Ward was a young man of good appearance and respect-

¹ New York City Hall Recorder. See 1 Am. St. Tr. 61.

² See 1 Am. St. Tr. 361.

able deportment, apparently about twenty-six years of age, and by occupation a cartman.

Hugh Maxwell,³ District Attorney, for the Prosecution.

John L. Graham,⁴ *Dr. John A. Graham*,⁵ *Wm. M. Price*, and *John Anthon*,⁶ for the Prisoner.

Mr. Maxwell opened the case and made an exposition of the facts he expected to prove, and of the law as applicable to them.

THE WITNESSES FOR THE PEOPLE.

Dr. Marinus Willet, Jr. Am a surgeon of the New York Hospital, to which the deceased was taken; examined the head of Robinson; found little evidence of serious injury on the external part of it. There were symptoms, however, of a compression of the brain, and there was a bruise over the right eyelid, extending from above the temple, about three inches down upon the cheek, which might have been produced by a blow. He was brought in on the evening of Saturday and on Sunday evening the operation of trepanning was performed by Dr. Mott. The skull was found to be fractured, but not so badly but the patient, had no other injury existed, might have recovered by the application of ordinary remedies. His death, about three on Monday morning, was occasioned, not by the fracture, but by the rupture of a blood-

vessel, the artery of the dura mater, and the extravasation of blood on the brain. Believe the blow occasioned the death.

Peter Bogert. Am a cartman. Was returning home on the evening of the affray between six and seven o'clock, not very dark, but the lamps were lighted. Three carts were passing down Chambers street; the first Ward's, the second Fash's, and the third mine. Observed Robinson passing down the flagging, which is laid transversely from the corner of Chamber and Chapel to the east side of Hudson street. He had a tin kettle in his hand, and was going the same way with Ward. About two feet of Ward's cart (who was upon a walk), he turned around and seized his horse by the head with his left hand. The horse sprang from him and turned upon the side walk, nearly throwing Ward from his cart. Ward was

³ See 1 Am. St. Tr. 62.

⁴ GRAHAM, JOHN LORIMER. (1797-1876.) Born London, England. Son of Dr. John A. Graham, who early in the nineteenth century was a practitioner in the New York Criminal Courts. Studied law with Judge Reeve, of Litchfield, Conn. Called to the bar, 1821. Became wealthy in the practice of his profession. Regent State University, 1834. Postmaster New York City, 1840-1844.

⁵ See Note 4.

⁶ See 2 Am. St. Tr. 787.

very near the side walk at the time, and he was turning into Chapel street, and deceased into Hudson street, where those streets form an acute angle, the further they advance, the less they were incommoded by each other. When Robinson took hold of the horse's bridle, Ward laid hold of his monachie⁷ and threw it at him. The monachie did not hit deceased; but he picked it up, drew it across his shoulders with both hands in a threatening attitude towards Ward, as if he intended to strike him. Ward's cart, however, had at this time so far advanced that he was not within striking distance. Almost simultaneously, Ward stopped his horse, stepped to the tail of his cart, sprang from it towards Robinson, and, in a scuffle, wrested the monachie from his hand, shoved him back a foot or two, and with both hands hold of the instrument, knocked him down with it by a blow on the right side of the head. At the moment of striking, Ward said "You damn'd son of a bitch, a little more and you would have thrown me from my cart!" The word and the blow seemed together; never knew an affray more rapid from its commencement to its conclusion. It seemed the transaction of a moment. Robinson fell, and Ward jumped upon his cart, taking the monachie with him, passed on about twenty-five feet, then stopped, hooked his wheel, and came back; but seeing Mr. Ry-

der with the man up, he again mounted his cart and rode off.

Cross-examined. I knew neither Ward nor Robinson previous to the transaction. Ward had a leather trunk and a roll of carpeting on his cart at the time. Deceased had no offensive weapon, but was in no danger from Ward's horse which when seized was quite restive. When Ryder took up the deceased, he called him by name, and also spoke to prisoner, and said, "Ward! for shame! you ought not to strike a man so." Could not say whether Robinson was intoxicated or not, nor for what reason he seized the horse. He was knocked down by the side of my cart; very quick; the whole was almost one act. Robinson picked up the monachie by the wheel; he was a stouter man than Ward.

Daniel Fash. Am a cartman; was following Ward's cart at the time of the affray; confirm the statement made by Bogert; saw the monachie thrown at Robinson by Ward. It flew over his head about two feet.

Cross-examined. Remained at the place until Mr. Ryder had raised up deceased. The hat of deceased was not struck off by the blow. As I was going down Hudson street and Ward down Chapel, it brought Robinson between our carts, but the further off as they progressed, as the streets diverged in different directions.

Richard G. Ryder. Am a cart-

⁷ Monachie is a Dutch word and was explained to mean a fore rung of the cart to which the lines were occasionally made fast, about three feet long, three inches by two and a half in thickness at the bottom, and lessening almost to a point at the top, usually made of oak or hickory.

man; came up just at the time Robinson held the monachie in his hand in an attitude of hostility to Ward. Saw Ward strike with the stick. It was but one blow. The man fell and I jumped off to his relief. Found it was Robinson, whom I knew, and seeing that the person who struck him was prisoner, whom I also knew, I cried, "shame" to Ward. Robinson laid lifeless as a log, and totally insensible. Ward moved off a few feet, where he remained. I raised up deceased and asked him if he knew me. He nodded assent; helped him across the street, washed the blood from his face and at the instance of a young gentleman who came up, bathed his wounds with spirits. Deceased then jumped upon his feet, refused to be carried home by me on my cart, jerked away,

and said he could go home alone. Acted as if he was intoxicated, for he went down Chambers street, which was not his way home. Had known deceased twelve or fourteen years. Heard Ward only say in reply to my statement that a cartman had struck deceased with a rung of his cart, that "it was not with his rung but with his monachie." Ward gave no indications of regret. Have known him about eighteen months; consider him a mild and worthy man. Robinson formerly drove a cart. He did not speak until his head had been washed in spirits.

Dr. Willet (re-called). A piece of fractured bone was removed. The rupture of the blood vessel could not have been occasioned by the trepanning for the blood on the brain was not only extravasated, but coagulated.

THE DEFENSE.

Robert Castle. Deceased appeared to be intoxicated in the afternoon of the affray. *Peter Nodine* and *Joseph Archer*, testified that he was a bad tempered man, passionate, perverse, and occasionally intemperate.

Ralph Olmstead, Robert Hyslop, Rufus L. Lord, Henry Hepburn, Charles Squire, Calvin W. Howe, and Allen C. Lee all merchants in the city had been acquainted with the prisoner for three years past; he had uniformly manifested a mild and amiable disposition, rather timid than quarrelsome, and more disposed to yield than rigorously to assert his rights. He was uniformly temperate, courteous and obliging, industrious and

honest, and supported by his labor a mother and two or three sisters.

Dr. Jeremiah D. Fowler. Live at Mount Pleasant, the birth-place of prisoner; had known him about seventeen years, and from a boy. His disposition had always appeared to be mild and good, and his connections in Westchester were respectable.

Robert K. Foster. Have known prisoner from 1810 to 1816, during which time he was an apprentice to me. He possessed the best disposition of any apprentice I ever had. Am a shoemaker; prisoner served out the full time of his engagement without indentures.

Dr. Richard L. Walker. Consider trepanning a dangerous

operation. Patients often die from the inflammation occasioned by it who might have recovered from the injury it was intended to remedy. The coagulated blood, referred to by Dr. Willet might have been occasioned by exposure to the air, nor would its coagulation prevent it from being absorbed. Cannot decide with certainty, even had I performed the operation myself, whether the death was occasioned by the monachie

or by the trepanning. Did not see the patient. Have known a rupture of a blood vessel from extreme passion. Persons of violent temper are liable to apoplexy from a surcharge of blood to the head.

Dr. Valentine Mott. Performed the operation of trepanning the deceased in the hospital; his head was broken and his death was occasioned by the injury, and not by the trepanning.

Mr. Anthon and *Mr. Price* addressed the jury, stating the laws of manslaughter and self defense as set out in the books.

Dr. Graham. Gentlemen of the Jury: The Almighty, of his infinite goodness, has given to one man ten talents, to another five talents, and to a third one talent. If I were to bury my talent in the earth, or lock it up on this occasion, I should not only do great injustice to the prisoner at the bar, but should also consider myself as sinning against the bounty of Providence. Therefore, as one of the counsel for the prisoner, I shall now have the honor of addressing you in his behalf.

The prisoner is indicted for the crime of manslaughter, in causing the death of Albert Robinson, by giving him a blow on the right side of the head with a stick attached to his cart, commonly called a monachie, on the evening of the 17th of October now last; to which charge the prisoner has pleaded not guilty, and put himself upon God and you, gentlemen of the jury, for trial.

I congratulate the prisoner and the public, that the constitution and laws have wisely placed in your hands the trial of this cause: knowing, as I do, the character of our New York jurors being proverbial for wisdom and sound discretion—lovers of liberty, humanity, and justice, and, generally speaking, men possessing undeviating integrity, and of high and delicate honor.

Having, with great deliberation, examined and considered the law and the facts—the principles which ought to govern in this case, and the tribunal which is to decide the fate of the prisoner, I have made up my opinion and fear not the final results. Of the law, as well as of the facts, you are the judges, and I shall draw on you, for my client, your verdict of acquittal. As discreet men, jurors, you will always pay the greatest deference and respect to what may fall from the lips of a learned judge, especially when it comes from one whose life has been devoted to philosophical and juridical studies; but remember, that the greatest lawyers and the greatest judges often differ in opinion, as much as in their looks, on the subject of homicide, which by the books is divided into three kinds, justifiable, excusable, and felonious. I contend, that instead of the prisoner having been guilty of manslaughter, as charged in the indictment, the act is excusable homicide, *se defendendo*, or in self defense.

To establish my defense for the prisoner, I shall confine myself principally to the law and the facts, since eloquence is necessary to defend a bad cause, and a good one may easily be supported by the logic of common sense, and the rhetoric of unstudied expression. Gentlemen, time, place and provocation, are all important in the investigation; thereupon hangs the very gist of this indictment; and this case, like all others, must stand or fall on its own merits. The learned counsel associated with me have read to you the law from Blackstone, Hale's Pleas of the Crown, East's Crown Law, and some other authorities which ought to govern in this case. I subscribe fully to the doctrine by those gentlemen so ably, forceably, and eloquently contended for, whatever may be the opinion of the court to the contrary.

Let me call your attention to the two great laws of human society, from whence all the rest derive their course, force, and obligation; they are those of Equity and Self-Preservation; by the first, all men are bound alike not to

hurt one another: by the second, all men have a right to defend themselves. The civil law says, "It is a maxim of the law, that whatever we do in the way, and for the ends of self defense, we may lawfully do." This principle of the civil law has been fully recognized in the fifth section of the act, passed the 14th of February, 1787, by our legislature, declaring that persons killing in self defense, or by misfortune, shall be therefor fully acquitted and discharged.

All the laws of society are entirely reciprocal, and no man ought to be exempt from their force; and whoever violates this primary law of nature, ought by the law of nature be destroyed. He who observes no law forfeits all title to the protection of law. It is wickedness not to destroy a destroyer, and all the ill consequences of self defense are chargeable upon him only who occasioned them. To allow a license to any man to do evil, with impunity, is to make vice triumph over virtue, and innocence to prey to the guilty. The law of nature does not only allow us, but obliges us to defend ourselves. It is our duty, not only to ourselves, but to society. If we suffer tamely a lawless attack upon our person, property, and fortunes, we encourage it, and involve others in our doom. And Cicero says, "He who does not resist mischief when he may, is guilty of the same crime, as if he had deserted his parents, his friends, and his country." So that the conduct of my client, in defending his person and his property against the unlawful and wicked attack of the deceased, is, I contend, excusable homicide in self defense, by all laws human and divine.

Again; the motive from which an action springs ought never to be overlooked, and it would be against natural justice to condemn a man to punishment for what is owing rather to his misfortune than his fault. The prisoner could have had no motive but merely to defend himself and his property. The deceased, a total stranger to him, seized his horse by the head and stopped him on the public high

road when my client was in the peace of God, in the peace of the people of the state of New York, and about his lawful business. This is a very important fact, and calls for the most serious consideration; and it ought to be most carefully weighed by every juror on the panel. Suppose either of you, gentlemen, had been stopped on the high road, just at the dusk of the evening, by a stranger, as was the prisoner by the deceased—your property seized by force—your person most grievously insulted and injured, and you had no alternative but to submit to the insult and outrage, or by defending yourself and property against the mischief intended you? Your own good sense, and knowledge of cause and effect, will instantly give the answer.

The counsel who preceded me in summing up this cause, having gone minutely into the testimony, I shall not trespass on your time by recapitulating the evidence, as the same must be fresh in your minds. I would ask, then, can you consign to a state's prison, for years, a worthy citizen, who, unfortunately, to save himself and his property from destruction, was driven of necessity to give the blow which has since proven the death of a man whom the prisoner believed at the time, was a lawless desperado? The prisoner deeply laments the deceased; but he feels no remorse—no disquieting dread of God or man, because his conscience whispers to him that what he did on that occasion was only in self defense.

The honorable the district attorney, in withholding from the jury the examination of the prisoner taken in the police immediately on his arrest, I must say, notwithstanding my friendship and esteem for that gentleman, does not comport with my idea of justice and humanity; and to my mind, it is self-evident Mr. Maxwell intends to press all sail that he possibly can to convict the prisoner. I therefore most earnestly request of you to banish from your ears the charms of his eloquence, and with your oaths upon your consciences, make to this tribunal and your God, your sol-

emn verdict. Gentlemen, in the name of your own interest—your own honor—and your own glory, I call upon you, by your verdict, to pronounce judgment on yourselves, because a singular misfortune may some day, by the providence of God, happen to some of you. If the authorities and arguments my learned associates and I have used have not been convincing, you would not be convinced though one should arise from the dead. Justice and humanity revolt at the idea of a verdict of guilty against the prisoner; and should you, by your verdict, pronounce the horrible word guilty, I should blush over this departure from those characteristic features of moral rectitude in the gentlemen who fill the panel, and tremble at the impending vengeance which awaits your future destiny.

Mr. Marwell argued in behalf of the people.

The RECORDER charged the jury, in which the prominent facts were recapitulated, and the law relative to manslaughter, and the distinction between it and chance medley in self defense, was stated and explained with precision and perspicuity.

The *Jury*, in about two hours, returned a verdict of *Not Guilty*.

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